

## SERVICES ACQUISITION REFORM ACT OF 2003

---

SEPTEMBER 3, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

together with

### ADDITIONAL VIEWS

[To accompany H.R. 1837]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1837) to improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

### CONTENTS

	Page
The Amendment .....	2
Purpose and Summary .....	2
Background and Need for the Legislation .....	2
Hearings .....	3
Committee Consideration .....	3
Vote of the Committee .....	3
Committee Oversight Findings .....	3
New Budget Authority and Tax Expenditures .....	3
Congressional Budget Office Cost Estimate .....	3
Performance Goals and Objectives .....	7
Constitutional Authority Statement .....	7
Section-by-Section Analysis and Discussion .....	7
Changes in Existing Law Made by the Bill, as Reported .....	9
Markup Transcript .....	9
Additional Views .....	97

The amendment adopted by this Committee is identical to the text reported by the Committee on Government Reform shown in their report filed May 19, 2003 (Rept. 108–117, Part 1).

#### PURPOSE AND SUMMARY

H.R. 1837, the “Services Acquisition Reform Act of 2003,” (SARA) reforms Federal Government acquisition services and creates an acquisition workforce training program. As part of these reforms, the bill establishes a program to allow for exchanges of employees on a temporary basis between Federal agencies and private sector organizations. Also, the bill extends to the contracting officers of the various civilian agencies, including the new Department of Homeland Security, the same powers available to the Department of Defense in their dealings with Federal Prison Industries, Inc. (FPI).

#### BACKGROUND AND NEED FOR THE LEGISLATION

The Chairman of the Committee on Government Reform, Representative Tom Davis, introduced H.R. 1837, the “Services Acquisition Reform Act of 2003,” on April 29, 2003. This legislation was referred to the Committees on Government Reform and Armed Services. The Committee on the Judiciary requested a sequential referral. The bill was referred to the Committee on the Judiciary for consideration through September 3, 2003.

The bill would reform how the government buys services and creates an acquisition workforce training program. As the Committee on Government Reform reported:

[H.R. 1837, The Services Acquisition Reform Act of 2003 (SARA),] will provide our acquisition workforce with the necessary tools to succeed through a carefully crafted set of provisions along with training and insightful management based on results and accountability. SARA is targeted towards the goal of a modern, responsive, flexible, market-based acquisition system that will result in the government leveraging the best the private sector has to offer at fair and reasonable prices. SARA will address training of our acquisition workforce to meet the challenges of the new service-oriented economy, it will provide for the adoption of business-like acquisition practices within the government, facilitate the acquisition of commercial services by building on the prior reforms in the acquisition of commercial items and enable our government to access cutting-edge technology within today’s commercial environment.<sup>1</sup>

The Committee on Government Reform reported the bill, as amended, favorably on May 19, 2003. The bill as introduced was referred to the Committee on the Judiciary because it contains several substantial provisions that fall within the Committee’s subject matter jurisdiction pertaining to government ethics and the Federal Tort Claims Act. These provisions apply to an exchange program for government and private sector acquisition employees. The details concerning these provisions are set forth in the section by section analysis.

<sup>1</sup> H.R. Rept. No. 108–117, Part I, at 26.

Additionally, the bill as reported by the Committee on Government Reform affects FPI. Federal Prison Industries was first authorized in 1934 to create work opportunities for inmates in the Federal prison system. Under the FPI program, all Federal agencies are required to purchase products offered by FPI, commonly referred to as FPI's "mandatory source" rule. FPI, rather than the buying agency, determines if FPI's offered product and delivery schedule meets the mission needs of the buying agency. Currently, FPI, rather than the buying agency, determines the reasonableness of FPI's offered price. The details of the FPI provisions are set forth in the section by section analysis.

#### HEARINGS

No hearings were held on H.R. 1837 in the Committee on the Judiciary.

#### COMMITTEE CONSIDERATION

On July 25, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 1837 with an amendment by voice vote, a quorum being present. The amendment consisted of the text of the bill as reported by the Committee on Government Reform.

#### VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Judiciary Committee's consideration of H.R. 1837.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1837, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 29, 2003.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1837, the Services Acquisition Reform Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

*H.R. 1837—Services Acquisition Reform Act of 2003.*

#### SUMMARY

H.R. 1837 would amend the laws governing how the Federal Government procures goods and services. The provisions of the bill with the largest budgetary effects would expand the authorized uses of share-in-savings (SIS) contracts by Government agencies to procure products and services and establish a fund to train Federal personnel in acquisition and contracting positions.

CBO estimates that expanding the use of SIS contracts would increase direct spending by \$80 million over the 2004–2008 period and by a total of about \$450 million over the 2004–2013 period. Enacting the bill would not affect revenues. In addition, CBO estimates that implementing H.R. 1837 would cost \$28 million over the 2004–2008 period for various administrative requirements, including a new advisory panel and council, as well as studies related to procurement issues, assuming appropriation of the necessary amounts.

H.R. 1837 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1837 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By Fiscal Year, in Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>CHANGES IN DIRECT SPENDING</b>										
Share-in-Savings Contracts										
Estimated Budget Authority	5	10	25	30	45	60	75	90	100	100
Estimated Outlays	2	6	14	24	34	48	62	77	91	98
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>										
Acquisition Workforce Training Program										
Estimated Authorization Level	5	5	5	5	5	6	6	6	6	6
Estimated Outlays	3	5	5	5	5	5	6	6	6	6
Other Costs										
Estimated Authorization Level	1	1	1	1	1	*	*	*	*	*
Estimated Outlays	1	1	1	1	1	*	*	*	*	*
Total Discretionary Costs										
Estimated Authorization Level	6	6	6	6	6	6	6	6	6	6
Estimated Outlays	4	6	6	6	6	5	6	6	6	6
NOTE: * = Less than \$500,000.										

## BASIS OF ESTIMATE

For this estimate, CBO assumes H.R. 1837 will be enacted by the end of fiscal year 2003. We assume that the necessary amounts will be appropriated for each year and that outlays will occur at historical rates for similar programs.

*Share-in-Savings Contracts*

Section 301 would expand the authority for Federal agencies to use SIS contracts to acquire goods and services. Currently, the use of those contracts is limited to purchasing information technology. The bill would allow such contracts to be awarded for up to 10 years.

A SIS contract is a contracting and funding strategy whereby a service or product required by an agency is provided by a private firm without full up-front funding. Instead, payment for this service or product is made by spending some of the estimated annual savings generated by the goods or services provided. Under H.R. 1837, agencies would be authorized to enter into SIS contracts without sufficient funds available for the termination cost of the contract if sufficient funds are available for the first year's payment under the contract. The bill would limit the amount of such unfunded termination liability to \$10 million per contract (or 50 percent of the termination costs, whichever is less).

Under current law, agencies are authorized to use a limited pilot program to enter into SIS contracts to obtain data and information-processing equipment and services. To date, use of the pilot program has been very limited. Because H.R. 1837 would broaden the potential use of this contracting mechanism, CBO expects that its use would become more widespread as agencies became familiar with it. In the mid-1980's, a similar contracting mechanism, energy-savings performance contracts (ESPCs), was authorized by the Congress. Use of ESPCs has accelerated over time, and today Federal agencies enter into around \$250 million worth of such contracts a year. Based on the experience with ESPCs, CBO expects

that agencies would need a few years to become familiar with SIS contracts before use of that type of contract would become common. We estimate that agencies would agree to acquire about \$115 million in goods and services through SIS contracts over the next 5 years and that obligations for such acquisitions would grow to \$425 million over the following 5 years.

Because both ESPC and SIS contracts authorize agencies to commit Federal funds in advance of appropriations, CBO considers the execution of such contracts to be a form of direct spending that should be reflected in the budget when such contracts are entered into and a new Government obligation is made. CBO's estimate assumes that outlays would be recorded when the services or equipment are provided (similar to the budgetary treatment of lease-purchases of buildings and facilities).

#### *Spending Subject to Appropriation*

CBO estimates that several sections of the bill would affect spending subject to appropriation. The following paragraphs discuss those costs.

*Funding for Acquisition Workforce Training Fund.* The bill would authorize the establishment of an Acquisition Workforce Training Fund. Under the bill, 5 percent of the fees collected by the General Services Administration (GSA) from other, nondefense agencies that procure goods and services through GSA's Governmentwide contracts would be deposited in the new fund. GSA generates most of those fees by charging other Federal agencies approximately 1 percent of the cost of purchases made through GSA's supply schedule services and data processing contracts. That fee is designed to recover administrative costs incurred by GSA. In 2002, GSA collected \$88 million in fees from agencies other than the Department of Defense. Thus, CBO estimates that the bill would authorize GSA to charge agencies a fee sufficient to establish a \$5 million Acquisition Workforce Training Fund each year, as well as continuing to cover the administrative costs of GSA's Governmentwide contracting programs.

*Government-Industry Exchange Program.* H.R. 1837 would establish an exchange program for certain types of employees between the Federal Government and private-sector employers to promote acquisition management skills. The bill would allow the exchange of employees for between 6 months and 2 years. Private-sector employers could be reimbursed for all or part of their employees' assignment with the Federal Government. Alternatively, H.R. 1837 would allow Federal agencies to accept voluntary employment services from private-sector employees.

Based on information from GSA and the experience of similar exchange programs, CBO expects that few private-sector employers would be willing to part with such employees for extended periods of time. Thus, we estimate that this provision would not result in significant additional costs to the Government. Any costs for reimbursing private-sector employers would be subject to the availability of appropriated funds.

*Other Costs.* H.R. 1837 also would establish a new advisory panel to review procurement policies, a Chief Acquisition Officers Council, and a center of excellence in the Office of Federal Procurement Policy. The bill would require various implementing regulations to

be issued by GSA, the Office of Personnel Management, and the Office of Management and Budget. In addition, the bill would require the General Accounting Office to prepare certain studies for the Congress on procurement issues. In total, CBO estimates that performing those responsibilities would cost \$1 million per year over the 2004–2008 period.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1837 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

#### PREVIOUS CBO ESTIMATE

On May 14, 2003, CBO transmitted a cost estimate for H.R. 1837 as ordered reported by the House Committee on Government Reform on May 8, 2003. The two versions of the bill are similar, and our cost estimates are identical.

#### ESTIMATE PREPARED BY:

Federal Costs: Matthew Pickford and Lisa Cash Driskill (226–2860), and  
Matthew Schmit (226–2840)  
Impact on State, Local, and Tribal Governments: Sarah Puro (225–3220)  
Impact on the Private Sector: Paige Piper/Bach (226–2940)

#### ESTIMATE APPROVED BY:

Peter H. Fontaine  
Deputy Assistant Director for Budget Analysis

#### PERFORMANCE GOALS AND OBJECTIVES

The provisions of H.R. 1837 which the Judiciary Committee has jurisdiction over does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the United States Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H.R. 1837 was referred to the Judiciary Committee because of its jurisdiction over sections 103 and 215. For a description of the other provisions of the bill, please refer to the report of the Committee on Government Reform. (H. Rept. No. 108–117, Part I)

##### *Sec. 103. Government-Industry Exchange Program.*

Section 103 of this bill amends Subpart B of part III of title 5 of the United States Code by adding Chapter 38—*Acquisition Professional Exchange Program*. Specifically, section 103 establishes a program to allow for exchanges of high performing acquisition employees on a temporary basis between Federal agencies and private

sector organizations. The Committee's jurisdiction is based on the criminal provisions related to the ethics requirements for Federal employees. The section has criminal, ethical, and tort provisions identical to those included in the Digital Tech Corps Act of 2002, which created a government-industry exchange program for high-tech managers.

The purpose of section 103 and the bill generally is to promote more efficient and effective government. Section 103 allows an agency employee to be assigned to a private sector organization or a private sector employee to be assigned to an agency. To be eligible the employee has to be an exceptional performer in the field of Federal acquisition and is expected to assume increased acquisition management responsibilities within the Federal Government.

This program benefits the participating agencies by exposing the acquisition components of these agencies to the very best practices of the private sector. It exposes the private sector participants to the special procurement requirements and processes of the Federal Government.

Under this section, public employees who are temporarily sent to the private sector would remain under the protections of the Federal Tort Claims Act, a matter which falls within the Committee on the Judiciary's Rule X jurisdiction. Also, under this section, private sector employees who are temporarily sent to the government would receive the protections of the Federal Tort Claims Act as well as coming under a variety of government ethics statutes, including Title 18 provisions, both matters which fall within the Committee on the Judiciary's Rule X jurisdiction. Private-sector employees could still be paid by the private-sector but would be considered a Federal employee for most purposes. Federal employees would only be assigned pursuant to a program developed by the Office of Federal Procurement Policy and the Office of Personnel Management.

*Sec. 215. Products of Federal Prison Industries Procedural Requirements.*

Under FPI's 1934 authorizing statute, it is the mandatory source for purchases by all Federal agencies of the products FPI makes. Federal contracting officers must purchase products offered by FPI, unless FPI authorizes, through the granting of a "waiver," solicitation of competitive offers from the private sector. The decision as to whether to grant a waiver is made by FPI, rather than the buying agency. FPI determines whether FPI's offered product and delivery schedule meets the mission needs of the buying agency. FPI, rather than the buying agency, determines the reasonableness of FPI's price.

The only limitation, under current law, is that FPI's offered price cannot exceed the highest price for a comparable item offered to the Federal Government by the private sector. FPI, rather than the buying agency, makes the determination of comparability. The result is that under FPI's current authorizing statute, businesses and their non-inmate workers, are foreclosed from even being able to bid on Federal contract opportunities funded with their tax dollars.

Section 215 would extend to the contracting officers of the various civilian agencies, including the new Department of Homeland Security, the same powers available to the Department of Defense



in its dealings with FPI. It will better enable them to get the “best value” for the taxpayer dollars being expended with FPI. Specifically, this section amends Title III of the Federal Property and Administrative Services Act of 1949, which governs procurement by the civilian agencies.

Section 215 will—

- (a) make explicit that a contracting officer is fully empowered to determine if a product offered by FPI is “comparable to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery;”
- (b) provide a contracting officer access to the full range of “market research” tools to make the required comparability determination and full discretion on how to use such tools;
- (c) make explicit that the full range of competitive procurement techniques are available to a contracting officer;
- (d) preclude FPI staff from challenging a contracting officer’s determination regarding the comparability of a product offered by FPI; and
- (e) empower contracting officers to ensure that FPI “performs its contractual obligations to the same extent as any other contractor.”

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this Committee for consideration of such provisions of the bill and amendment as fall within the jurisdiction of this Committee pursuant to clause 1(k) of Rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on Government Reform are shown in the report filed by that Committee (Rept. 108–117, Part 1).

### MARKUP TRANSCRIPT **BUSINESS MEETING** **FRIDAY, JULY 25, 2003**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:40 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present. It is the Chair’s intention to do the noncontroversial bills first while Members are staggering in after our 3:30 a.m. vote last night. So pursuant to notice, I now call up the bill H.R. 1837, the “Services Acquisition Reform Act of 2003” for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point, and the text of the bill as reported

by the Committee on Government Reform, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment and open for amendment at any point.

[The Committee Print showing the text of H.R. 1837, as approved by the Committee on Government Reform, follows:]

**COMMITTEE PRINT**

JULY 23, 2003

**Showing the Text of H. R. 1837****As Approved by the Committee on Government Reform****On May 7, 2003**108TH CONGRESS  
1ST SESSION**H. R. 1837**

To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

---

**IN THE HOUSE OF REPRESENTATIVES**

APRIL 29, 2003

Mr. TOM DAVIS of Virginia (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

[For text of introduced bill, see copy of bill as introduced on April 29, 2003]

---

**A BILL**

To improve the Federal acquisition workforce and the process for the acquisition of services by the Federal Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
 3 “Services Acquisition Reform Act of 2003”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
 5 this Act is as follows:

Sec. 1. Short title; table of contents.  
 Sec. 2. Executive agency defined.

**TITLE I—ACQUISITION WORKFORCE AND TRAINING**

Sec. 101. Definition of acquisition.  
 Sec. 102. Acquisition workforce training fund.  
 Sec. 103. Government-industry exchange program.  
 Sec. 104. Acquisition workforce recruitment program.  
 Sec. 105. Architectural and engineering acquisition workforce.

**TITLE II—ADAPTATION OF BUSINESS ACQUISITION PRACTICES**

**Subtitle A—Adaptation of Business Management Practices**

Sec. 201. Chief Acquisition Officers.  
 Sec. 202. Chief Acquisition Officers Council.  
 Sec. 203. Statutory and regulatory review.

**Subtitle B—Other Acquisition Improvements**

Sec. 211. Extension of authority to carry out franchise fund programs.  
 Sec. 212. Agency acquisition protests.  
 Sec. 213. Improvements in contracting for architectural and engineering services.  
 Sec. 214. Authorization of telecommuting for Federal contractors.  
 Sec. 215. Procedural requirements for civilian agencies relating to products of Federal Prison Industries.

**TITLE III—CONTRACT INCENTIVES**

Sec. 301. Share-in-savings initiatives.  
 Sec. 302. Incentives for contract efficiency.

**TITLE IV—ACQUISITIONS OF COMMERCIAL ITEMS**

Sec. 401. Preference for performance-based contracting.  
 Sec. 402. Authorization of additional commercial contract types.  
 Sec. 403. Clarification of commercial services definition.  
 Sec. 404. Designation of commercial business entities.

**TITLE V—OTHER MATTERS**

Sec. 501. Authority to enter into certain procurement-related transactions and to carry out certain prototype projects.  
 Sec. 502. Amendments relating to Federal emergency procurement flexibility.

Sec. 503. Authority to make inflation adjustments to simplified acquisition threshold.

Sec. 504. Technical corrections related to duplicative amendments.

Sec. 505. Exemption from limitations on procurement of foreign information technology that is a commercial item.

Sec. 506. Prohibition on use of quotas.

Sec. 507. Public disclosure of noncompetitive contracting for the reconstruction of infrastructure in Iraq.

Sec. 508. Applicability of certain provisions to sole source contracts for goods and services treated as commercial items.

1 **SEC. 2. EXECUTIVE AGENCY DEFINED.**

2 In this Act, the term “executive agency” has the  
3 meaning given that term in section 4(1) of the Office of  
4 Federal Procurement Policy Act (41 U.S.C. 403(1)), un-  
5 less specifically stated otherwise.

6 **TITLE I—ACQUISITION**  
7 **WORKFORCE AND TRAINING**

8 **SEC. 101. DEFINITION OF ACQUISITION.**

9 Section 4 of the Office of Federal Procurement Policy  
10 Act (41 U.S.C. 403) is amended by adding at the end the  
11 following:

12 “(16) The term ‘acquisition’—

13 “(A) means the process of acquiring, with  
14 appropriated funds, by contract for purchase or  
15 lease, property or services (including construc-  
16 tion) that support the missions and goals of an  
17 executive agency, from the point at which the  
18 requirements of the executive agency are estab-  
19 lished in consultation with the chief acquisition  
20 officer of the executive agency; and

1 “(B) includes—

2 “(i) the process of acquiring property  
3 or services that are already in existence, or  
4 that must be created, developed, dem-  
5 onstrated, and evaluated;

6 “(ii) the description of requirements  
7 to satisfy agency needs;

8 “(iii) solicitation and selection of  
9 sources;

10 “(iv) award of contracts;

11 “(v) contract performance;

12 “(vi) contract financing;

13 “(vii) management and measurement  
14 of contract performance through final de-  
15 livery and payment; and

16 “(viii) technical and management  
17 functions directly related to the process of  
18 fulfilling agency requirements by con-  
19 tract.”.

20 **SEC. 102. ACQUISITION WORKFORCE TRAINING FUND.**

21 (a) PURPOSES.—The purposes of this section are to  
22 ensure that the Federal acquisition workforce—

23 (1) adapts to fundamental changes in the na-  
24 ture of Federal Government acquisition of property

1 and services associated with the changing roles of  
2 the Federal Government; and

3 (2) acquires new skills and a new perspective to  
4 enable it to contribute effectively in the changing en-  
5 vironment of the 21st century.

6 (b) ESTABLISHMENT OF FUND.—Section 37 of the  
7 Office of Federal Procurement Policy Act (41 U.S.C. 433)  
8 is amended by adding at the end of subsection (h) the  
9 following new paragraph:

10 “(3) ACQUISITION WORKFORCE TRAINING  
11 FUND.—(A) The Administrator of General Services  
12 shall establish an acquisition workforce training  
13 fund. The Administrator shall manage the fund  
14 through the Federal Acquisition Institute to support  
15 the training of the acquisition workforce of the exec-  
16 utive agencies other than the Department of De-  
17 fense. The Administrator shall consult with the Ad-  
18 ministrator for Federal Procurement Policy in man-  
19 aging the fund.

20 “(B) There shall be credited to the acquisition  
21 workforce training fund 5 percent of the fees col-  
22 lected by executive agencies under the following con-  
23 tracts:

24 “(i) Governmentwide task and delivery-  
25 order contracts entered into under sections

1           2304a and 2304b of title 10, United States  
2           Code, or sections 303H and 303I of the Federal  
3           Property and Administrative Services Act of  
4           1949 (41 U.S.C. 253h and 253i).

5           “(ii) Governmentwide contracts for the ac-  
6           quisition of information technology as defined  
7           in section 11101 of title 40, United States  
8           Code, and multiagency acquisition contracts for  
9           such technology authorized by section 11314 of  
10          such title.

11          “(iii) Multiple-award schedule contracts  
12          entered into by the Administrator of General  
13          Services.

14          “(C) The head of an executive agency that ad-  
15          ministers a contract described in subparagraph (B)  
16          shall remit to the General Services Administration  
17          the amount required to be credited to the fund with  
18          respect to such contract at the end of each quarter  
19          of the fiscal year.

20          “(D) The Administrator of General Services,  
21          through the Office of Federal Acquisition Policy,  
22          shall ensure that funds collected for training under  
23          this section are not used for any purpose other than  
24          the purpose specified in subparagraph (A).



1 “(E) Amounts credited to the fund shall be in  
 2 addition to funds requested and appropriated for  
 3 education and training referred to in paragraph (1).

4 “(F) Amounts credited to the fund shall remain  
 5 available until expended.”.

6 **SEC. 103. GOVERNMENT-INDUSTRY EXCHANGE PROGRAM.**

7 (a) IN GENERAL.—Subpart B of part III of title 5,  
 8 United States Code, is amended by adding at the end the  
 9 following:

10 **“CHAPTER 38—ACQUISITION**  
 11 **PROFESSIONAL EXCHANGE PROGRAM**

“Sec.

“3801. Definitions.

“3802. General provisions.

“3803. Assignment of employees to private sector organizations.

“3804. Assignment of employees from private sector organizations.

“3805. Reporting requirement.

“3806. Regulations.

12 **“§ 3801. Definitions**

13 “For purposes of this chapter—

14 “(1) the term ‘agency’—

15 “(A) subject to subparagraph (B), means  
 16 an executive agency; and

17 “(B) does not include—

18 “(i) the General Accounting Office;

19 “(ii) an Office of Inspector General of  
 20 an establishment or a designated Federal  
 21 entity established under the Inspector Gen-  
 22 eral Act of 1978; and

1 “(iii) the Defense Contract Audit  
2 Agency referred to in section 2313(b) of  
3 title 10; and

4 “(2) the term ‘detail’ means—

5 “(A) the assignment or loan of an em-  
6 ployee of an agency to a private sector organi-  
7 zation without a change of position from the  
8 agency that employs the individual, or

9 “(B) the assignment or loan of an em-  
10 ployee of a private sector organization to an  
11 agency without a change of position from the  
12 private sector organization that employs the in-  
13 dividual,

14 whichever is appropriate in the context in which  
15 such term is used.

16 **“§ 3802. General provisions**

17 “(a) ASSIGNMENT AUTHORITY.—On request from or  
18 with the agreement of a private sector organization, and  
19 with the consent of the employee concerned, the head of  
20 an agency may arrange for the assignment of an employee  
21 of the agency to a private sector organization or an em-  
22 ployee of a private sector organization to the agency. An  
23 eligible employee is an individual who—

24 “(1) works in the field of Federal acquisition or  
25 acquisition management;

1 “(2) is considered an exceptional performer by  
2 the individual’s current employer; and

3 “(3) is expected to assume increased acquisition  
4 management responsibilities in the future.

5 An employee of an agency shall be eligible to participate  
6 in this program only if the employee is employed at the  
7 GS–11 level or above (or equivalent) and is serving under  
8 a career or career-conditional appointment or an appoint-  
9 ment of equivalent tenure in the excepted service.

10 “(b) AGREEMENTS.—Each agency that exercises its  
11 authority under this chapter shall provide for a written  
12 agreement between the agency and the employee con-  
13 cerned regarding the terms and conditions of the employ-  
14 ee’s assignment. In the case of an employee of the agency,  
15 the agreement shall—

16 “(1) require the employee to serve in the civil  
17 service, upon completion of the assignment, for a pe-  
18 riod equal to the length of the assignment; and

19 “(2) provide that, in the event the employee  
20 fails to carry out the agreement (except for good and  
21 sufficient reason, as determined by the head of the  
22 agency from which assigned) the employee shall be  
23 liable to the United States for payment of all ex-  
24 penses of the assignment.

1 An amount under paragraph (2) shall be treated as a debt  
2 due the United States.

3 “(c) TERMINATION.—Assignments may be termi-  
4 nated by the agency or private sector organization con-  
5 cerned for any reason at any time.

6 “(d) DURATION.—Assignments under this chapter  
7 shall be for a period of between 6 months and 1 year,  
8 and may be extended in 3-month increments for a total  
9 of not more than 1 additional year, except that no assign-  
10 ment under this chapter may commence after the end of  
11 the 5-year period beginning on the date of the enactment  
12 of this chapter.

13 “(e) ASSISTANCE.—The Administrator for Federal  
14 Procurement Policy, by agreement with the Office of Per-  
15 sonnel Management, may assist in the administration of  
16 this chapter, including by maintaining lists of potential  
17 candidates for assignment under this chapter, establishing  
18 mentoring relationships for the benefit of individuals who  
19 are given assignments under this chapter, and publicizing  
20 the program.

21 “(f) CONSIDERATIONS.—In exercising any authority  
22 under this chapter, an agency shall take into  
23 consideration—

24 “(1) the need to ensure that small business con-  
25 cerns are appropriately represented with respect to

1 the assignments described in sections 3803 and  
2 3804, respectively; and

3 “(2) how assignments described in section 3803  
4 might best be used to help meet the needs of the  
5 agency for the training of employees in acquisition  
6 management.

7 **“§ 3803. Assignment of employees to private sector or-**  
8 **ganizations**

9 “(a) IN GENERAL.—An employee of an agency as-  
10 signed to a private sector organization under this chapter  
11 is deemed, during the period of the assignment, to be on  
12 detail to a regular work assignment in his agency.

13 “(b) COORDINATION WITH CHAPTER 81.—Notwith-  
14 standing any other provision of law, an employee of an  
15 agency assigned to a private sector organization under this  
16 chapter is entitled to retain coverage, rights, and benefits  
17 under subchapter I of chapter 81, and employment during  
18 the assignment is deemed employment by the United  
19 States, except that, if the employee or the employee’s de-  
20 pendants receive from the private sector organization any  
21 payment under an insurance policy for which the premium  
22 is wholly paid by the private sector organization, or other  
23 benefit of any kind on account of the same injury or death,  
24 then, the amount of such payment or benefit shall be cred-

1 ited against any compensation otherwise payable under  
2 subchapter I of chapter 81.

3 “(c) REIMBURSEMENTS.—The assignment of an em-  
4 ployee to a private sector organization under this chapter  
5 may be made with or without reimbursement by the pri-  
6 vate sector organization for the travel and transportation  
7 expenses to or from the place of assignment, subject to  
8 the same terms and conditions as apply with respect to  
9 an employee of a Federal agency or a State or local gov-  
10 ernment under section 3375, and for the pay, or a part  
11 thereof, of the employee during assignment. Any reim-  
12 bursements shall be credited to the appropriation of the  
13 agency used for paying the travel and transportation ex-  
14 penses or pay.

15 “(d) TORT LIABILITY; SUPERVISION.—The Federal  
16 Tort Claims Act and any other Federal tort liability stat-  
17 ute apply to an employee of an agency assigned to a pri-  
18 vate sector organization under this chapter. The super-  
19 vision of the duties of an employee of an agency so as-  
20 signed to a private sector organization may be governed  
21 by an agreement between the agency and the organization.

22 “(e) SMALL BUSINESS CONCERNS.—

23 “(1) IN GENERAL.—The head of each agency  
24 shall take such actions as may be necessary to en-  
25 sure that, of the assignments made under this chap-

1       ter from such agency to private sector organizations  
2       in each year, at least 20 percent are to small busi-  
3       ness concerns.

4       “(2) DEFINITIONS.—For purposes of this  
5       subsection—

6               “(A) the term ‘small business concern’  
7               means a business concern that satisfies the  
8               definitions and standards specified by the Ad-  
9               ministrator of the Small Business Administra-  
10              tion under section 3(a)(2) of the Small Busi-  
11              ness Act (as from time to time amended by the  
12              Administrator);

13             “(B) the term ‘year’ refers to the 12-  
14             month period beginning on the date of the en-  
15             actment of this chapter, and each succeeding  
16             12-month period in which any assignments  
17             under this chapter may be made; and

18             “(C) the assignments ‘made’ in a year are  
19             those commencing in such year.

20       “(3) REPORTING REQUIREMENT.—An agency  
21       which fails to comply with paragraph (1) in a year  
22       shall, within 90 days after the end of such year, sub-  
23       mit a report to the Committees on Government Re-  
24       form and Small Business of the House of Represent-  
25       atives and the Committees on Governmental Affairs

1 and Small Business of the Senate. The report shall  
2 include—

3 “(A) the total number of assignments  
4 made under this chapter from such agency to  
5 private sector organizations in the year;

6 “(B) of that total number, the number  
7 (and percentage) made to small business con-  
8 cerns; and

9 “(C) the reasons for the agency’s non-  
10 compliance with paragraph (1).

11 “(4) EXCLUSION.—This subsection shall not  
12 apply to an agency in any year in which it makes  
13 fewer than 5 assignments under this chapter to pri-  
14 vate sector organizations.

15 **“§ 3804. Assignment of employees from private sector**  
16 **organizations**

17 “(a) IN GENERAL.—An employee of a private sector  
18 organization assigned to an agency under this chapter is  
19 deemed, during the period of the assignment, to be on de-  
20 tail to such agency.

21 “(b) TERMS AND CONDITIONS.—An employee of a  
22 private sector organization assigned to an agency under  
23 this chapter—



1 “(1) may continue to receive pay and benefits  
2 from the private sector organization from which he  
3 is assigned;

4 “(2) is deemed, notwithstanding subsection (a),  
5 to be an employee of the agency for the purposes  
6 of—

7 “(A) chapter 73;

8 “(B) sections 201, 203, 205, 207, 208,  
9 209, 603, 606, 607, 643, 654, 1905, and 1913  
10 of title 18;

11 “(C) sections 1343, 1344, and 1349(b) of  
12 title 31;

13 “(D) the Federal Tort Claims Act and any  
14 other Federal tort liability statute;

15 “(E) the Ethics in Government Act of  
16 1978;

17 “(F) section 1043 of the Internal Revenue  
18 Code of 1986; and

19 “(G) section 27 of the Office of Federal  
20 Procurement Policy Act;

21 “(3) may not have access to any trade secrets  
22 or to any other nonpublic information which is of  
23 commercial value to the private sector organization  
24 from which he is assigned; and

1           “(4) is subject to such regulations as the Presi-  
2           dent may prescribe.

3   The supervision of an employee of a private sector organi-  
4   zation assigned to an agency under this chapter may be  
5   governed by agreement between the agency and the private  
6   sector organization concerned. Such an assignment may  
7   be made with or without reimbursement by the agency for  
8   the pay, or a part thereof, of the employee during the pe-  
9   riod of assignment, or for any contribution of the private  
10   sector organization to employee benefit systems.

11       “(c) COORDINATION WITH CHAPTER 81.—An em-  
12   ployee of a private sector organization assigned to an  
13   agency under this chapter who suffers disability or dies  
14   as a result of personal injury sustained while performing  
15   duties during the assignment shall be treated, for the pur-  
16   pose of subchapter I of chapter 81, as an employee as de-  
17   fined by section 8101 who had sustained the injury in the  
18   performance of duty, except that, if the employee or the  
19   employee’s dependents receive from the private sector or-  
20   ganization any payment under an insurance policy for  
21   which the premium is wholly paid by the private sector  
22   organization, or other benefit of any kind on account of  
23   the same injury or death, then, the amount of such pay-  
24   ment or benefit shall be credited against any compensation  
25   otherwise payable under subchapter I of chapter 81.

1       “(d) PROHIBITION AGAINST CHARGING CERTAIN  
2 COSTS TO THE FEDERAL GOVERNMENT.—A private sec-  
3 tor organization may not charge the Federal Government,  
4 as direct or indirect costs under a Federal contract, the  
5 costs of pay or benefits paid by the organization to an  
6 employee assigned to an agency under this chapter for the  
7 period of the assignment.

8       **“§ 3805. Reporting requirement**

9       “(a) IN GENERAL.—The Office of Personnel Manage-  
10 ment shall, not later than April 30 and October 31 of each  
11 year, prepare and submit to the Committee on Govern-  
12 ment Reform of the House of Representatives and the  
13 Committee on Governmental Affairs of the Senate a semi-  
14 annual report summarizing the operation of this chapter  
15 during the immediately preceding 6-month period ending  
16 on March 31 and September 30, respectively.

17       “(b) CONTENT.—Each report shall include, with re-  
18 spect to the 6-month period to which such report relates—

19               “(1) the total number of individuals assigned  
20 to, and the total number of individuals assigned  
21 from, each agency during such period;

22               “(2) a brief description of each assignment in-  
23 cluded under paragraph (1), including—

24                       “(A) the name of the assigned individual,  
25 as well as the private sector organization and

1 the agency (including the specific bureau or  
2 other agency component) to or from which such  
3 individual was assigned;

4 “(B) the respective positions to and from  
5 which the individual was assigned, including the  
6 duties and responsibilities and the pay grade or  
7 level associated with each; and

8 “(C) the duration and objectives of the in-  
9 dividual’s assignment; and

10 “(3) such other information as the Office con-  
11 siders appropriate.

12 “(e) PUBLICATION.—A copy of each report submitted  
13 under subsection (a)—

14 “(1) shall be published in the Federal Register;  
15 and

16 “(2) shall be made publicly available on the  
17 Internet.

18 “(d) AGENCY COOPERATION.—On request of the Of-  
19 fice, agencies shall furnish such information and reports  
20 as the Office may require in order to carry out this sec-  
21 tion.

22 **“§ 3806. Regulations**

23 “The Director of the Office of Personnel Manage-  
24 ment shall prescribe regulations for the administration of  
25 this chapter.”.

1 (b) REPORT.—Not later than 4 years after the date  
2 of the enactment of this Act, the General Accounting Of-  
3 fice shall prepare and submit to the Committee on Govern-  
4 ment Reform of the House of Representatives and the  
5 Committee on Governmental Affairs of the Senate a report  
6 on the operation of chapter 38 of title 5, United States  
7 Code (as added by this section). Such report shall  
8 include—

9 (1) an evaluation of the effectiveness of the pro-  
10 gram established by such chapter; and

11 (2) a recommendation as to whether such pro-  
12 gram should be continued (with or without modifica-  
13 tion) or allowed to lapse.

14 (c) CLERICAL AMENDMENT.—The table of chapters  
15 at the beginning of part III of title 5, United States Code,  
16 is amended by inserting after the item relating to chapter  
17 37 the following:

“38. Acquisition Professional Exchange Program ..... 3801”.

18 (d) COORDINATION WITH ACQUISITION WORKFORCE  
19 PROVISIONS OF OFFICE OF FEDERAL PROCUREMENT  
20 POLICY ACT.—Section 37 of the Office of Federal Pro-  
21 curement Policy Act (41 U.S.C. 433) is amended by add-  
22 ing at the end the following new subsection:

23 “(i) AUTHORITY TO DETAIL EMPLOYEES TO NON-  
24 FEDERAL EMPLOYERS.—(1) In carrying out the provi-  
25 sions of this section, the Administrator, by agreement with

1 the Director of the Office of Personnel Management, may  
2 provide for a program under which a Federal employee  
3 may be detailed to a non-Federal employer. The Adminis-  
4 trator, by agreement with the Director of the Office of  
5 Personnel Management, shall prescribe regulations for  
6 such program, including the conditions for service and du-  
7 ties as the Administrator considers necessary.

8 “(2) An assignment described in section 3803 of title  
9 5, United States Code, may not be made unless a program  
10 under paragraph (1) is established, and the assignment  
11 is made in accordance with the requirements of such pro-  
12 gram.”.

13 (e) ETHICS PROVISIONS.—

14 (1) ONE-YEAR RESTRICTION ON CERTAIN COM-  
15 MUNICATIONS.—Section 207(c)(2)(A)(v) of title 18,  
16 United States Code, is amended by inserting “or  
17 38” after “chapter 37”.

18 (2) DISCLOSURE OF CONFIDENTIAL INFORMA-  
19 TION.—Section 1905 of title 18, United States Code,  
20 is amended by inserting “or 38” after “chapter 37”.

21 (3) CONTRACT ADVICE.—Section 207(l) of title  
22 18, United States Code, is amended—

23 (A) in the subsection heading, by striking  
24 “DETAILS.—” and inserting “DETAILEES.—”;  
25 and

1 (B) by inserting “or 38” after “chapter  
2 37”.

3 (4) RESTRICTION ON DISCLOSURE OF PRO-  
4 CUREMENT INFORMATION.—Section 27 of the Office  
5 of Federal Procurement Policy Act (41 U.S.C. 423)  
6 is amended in the last sentence of subsection (a)(1)  
7 by inserting “or 38” after “chapter 37”.

8 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) AMENDMENTS TO TITLE 5, UNITED  
10 STATES CODE.—Title 5, United States Code, is  
11 amended—

12 (A) in section 3111(d), by inserting “or  
13 38” after “chapter 37”;

14 (B) in section 7353(b)(4), by inserting “or  
15 38” after “chapter 37”.

16 (2) AMENDMENT TO TITLE 18, UNITED STATES  
17 CODE.—Section 209(g) of title 18, United States  
18 Code, is amended—

19 (A) in paragraph (1), by inserting “or 38”  
20 after “chapter 37”; and

21 (B) by amending paragraph (2) to read as  
22 follows:

23 “(2) For purposes of this subsection, the term  
24 ‘agency’—

1 “(A) with respect to assignments under chapter  
2 37 of title 5, means an agency (as defined in section  
3 3701 of title 5) and the Office of the Chief Tech-  
4 nology Officer of the District of Columbia; and

5 “(B) with respect to assignments under chapter  
6 38 of title 5, means an agency (as defined by section  
7 3801 of title 5).”.

8 (3) ELIGIBILITY FOR THRIFT SAVINGS PLAN.—  
9 Section 125(c)(1)(D) of Public Law 100–238 (101  
10 Stat. 1757; 5 U.S.C. 8432 note) is amended by in-  
11 serting “or 38” after “chapter 37”.

12 **SEC. 104. ACQUISITION WORKFORCE RECRUITMENT PRO-**  
13 **GRAM.**

14 (a) AUTHORITY TO CARRY OUT PROGRAM.—For  
15 purposes of sections 3304, 5333, and 5753 of title 5,  
16 United States Code, the head of a department or agency  
17 of the United States (including the Secretary of Defense)  
18 may determine that certain Federal acquisition positions  
19 are “shortage category” positions in order to recruit and  
20 appoint directly to positions of employment in the depart-  
21 ment or agency highly qualified persons, such as any per-  
22 son who—

23 (1) holds a bachelor’s degree from an accredited  
24 institution of higher education;



1           (2) holds, from an accredited law school or an  
2           accredited institution of higher education—

3                   (A) a law degree; or

4                   (B) a masters or equivalent degree in busi-  
5           ness administration, public administration, or  
6           systems engineering; or

7           (3) has significant experience with commercial  
8           acquisition practices, terms, and conditions.

9           (b) REQUIREMENTS.—The exercise of authority to  
10          take a personnel action under this section shall be subject  
11          to policies prescribed by the Office of Personnel Manage-  
12          ment that govern direct recruitment, including policies re-  
13          quiring appointment of a preference eligible who satisfies  
14          the qualification requirements.

15          (c) TERMINATION OF AUTHORITY.—The head of a  
16          department or agency may not appoint a person to a posi-  
17          tion of employment under this section after September 30,  
18          2007.

19          (d) REPORT.—Not later than March 31, 2007, the  
20          Administrator for Federal Procurement Policy shall sub-  
21          mit to Congress a report on the implementation of this  
22          section. The report shall include—

23                   (1) the Administrator's assessment of the effi-  
24          cacy of the exercise of the authority provided in this

1 section in attracting employees with unusually high  
2 qualifications to the acquisition workforce; and

3 (2) any recommendations considered appro-  
4 priate by the Administrator on whether the author-  
5 ity to carry out the program should be extended.

6 **SEC. 105. ARCHITECTURAL AND ENGINEERING ACQUI-**  
7 **SITION WORKFORCE.**

8 The Administrator for Federal Procurement Policy,  
9 in consultation with the Secretary of Defense, the Admin-  
10 istrator of General Services, and the Director of the Office  
11 of Personnel Management, shall develop and implement a  
12 plan to ensure that the Federal Government maintains the  
13 necessary capability with respect to the acquisition of ar-  
14 chitectural and engineering services to—

15 (1) ensure that Federal Government employees  
16 have the expertise to determine agency requirements  
17 for such services;

18 (2) establish priorities and programs (including  
19 acquisition plans);

20 (3) establish professional standards;

21 (4) develop scopes of work; and

22 (5) award and administer contracts for such  
23 services.

1 **TITLE II—ADAPTATION OF BUSI-**  
2 **NESS ACQUISITION PRAC-**  
3 **TICES**

4 **Subtitle A—Adaptation of Business**  
5 **Management Practices**

6 **SEC. 201. CHIEF ACQUISITION OFFICERS.**

7 (a) APPOINTMENT OF CHIEF ACQUISITION OFFI-  
8 CERS.—(1) Section 16 of the Office of Federal Procure-  
9 ment Policy Act (41 U.S.C. 414) is amended to read as  
10 follows:

11 **“SEC. 16. CHIEF ACQUISITION OFFICERS.**

12 “(a) ESTABLISHMENT OF AGENCY CHIEF ACQUI-  
13 SITION OFFICERS.—The head of each executive agency  
14 (other than the Department of Defense) shall appoint or  
15 designate a non-career employee as Chief Acquisition Offi-  
16 cer for the agency, who shall—

17 “(1) have acquisition management as that offi-  
18 cial’s primary duty; and

19 “(2) advise and assist the head of the executive  
20 agency and other agency officials to ensure that the  
21 mission of the executive agency is achieved through  
22 the management of the agency’s acquisition activi-  
23 ties.

1       “(b) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF  
2 ACQUISITION OFFICERS.—The functions of each Chief Ac-  
3 quisition Officer shall include—

4           “(1) monitoring the performance of acquisition  
5 activities and acquisition programs of the executive  
6 agency, evaluating the performance of those pro-  
7 grams on the basis of applicable performance meas-  
8 urements, and advising the head of the executive  
9 agency regarding the appropriate business strategy  
10 to achieve the mission of the executive agency;

11          “(2) increasing the use of full and open com-  
12 petition in the acquisition of property and services  
13 by the executive agency by establishing policies, pro-  
14 cedures, and practices that ensure that the executive  
15 agency receives a sufficient number of sealed bids or  
16 competitive proposals from responsible sources to  
17 fulfill the Government’s requirements (including per-  
18 formance and delivery schedules) at the best value  
19 considering the nature of the property or service  
20 procured;

21          “(3) making acquisition decisions consistent  
22 with all applicable laws and establishing clear lines  
23 of authority, accountability, and responsibility for  
24 acquisition decisionmaking within the executive  
25 agency;

1           “(4) managing the direction of acquisition pol-  
2       icy for the executive agency, including implementa-  
3       tion of the unique acquisition policies, regulations,  
4       and standards of the executive agency;

5           “(5) developing and maintaining an acquisition  
6       career management program in the executive agency  
7       to ensure that there is an adequate professional  
8       workforce; and

9           “(6) as part of the strategic planning and per-  
10      formance evaluation process required under section  
11      306 of title 5, United States Code, and sections  
12      1105(a)(28), 1115, 1116, and 9703 of title 31,  
13      United States Code—

14           “(A) assessing the requirements estab-  
15      lished for agency personnel regarding knowl-  
16      edge and skill in acquisition resources manage-  
17      ment and the adequacy of such requirements  
18      for facilitating the achievement of the perform-  
19      ance goals established for acquisition manage-  
20      ment;

21           “(B) in order to rectify any deficiency in  
22      meeting such requirements, developing strate-  
23      gies and specific plans for hiring, training, and  
24      professional development; and

1 “(C) reporting to the head of the executive  
2 agency on the progress made in improving ac-  
3 quisition management capability.”.

4 (2) The item relating to section 16 in the table of  
5 contents in section 1(b) of such Act is amended to read  
6 as follows:

“Sec. 16. Chief Acquisition Officers.”.

7 (b) REFERENCES TO SENIOR PROCUREMENT EXECU-  
8 TIVE.—

9 (1) AMENDMENT TO THE OFFICE OF FEDERAL  
10 POLICY ACT.—

11 (A) Subsections (a)(2)(A) and (b) of sec-  
12 tion 20 of the Office of Federal Procurement  
13 Policy Act (41 U.S.C. 418(a)(2)(A), (b)) are  
14 amended by striking “senior procurement exec-  
15 utive” each place it appears and inserting  
16 “Chief Acquisition Officer”.

17 (B) Subsection (c)(2)(A)(ii) of section 29  
18 of the Office of Federal Procurement Policy Act  
19 (41 U.S.C. 425(c)(2)(A)(ii)) is amended by  
20 striking “senior procurement executive” and in-  
21 serting “Chief Acquisition Officer”.

22 (C) Subsection (c) of section 37 of the Of-  
23 fice of Federal Procurement Policy Act (41  
24 U.S.C. 433(c)) is amended—

1 (i) by striking “SENIOR PROCURE-  
2 MENT EXECUTIVE” in the heading and in-  
3 serting “CHIEF ACQUISITION OFFICER”;  
4 and

5 (ii) by striking “senior procurement  
6 executive” each place it appears and in-  
7 serting “Chief Acquisition Officer”.

8 (2) AMENDMENT TO TITLE III OF THE FED-  
9 ERAL PROPERTY AND ADMINISTRATIVE SERVICES  
10 ACT OF 1949.—Sections 302C(b) and  
11 303(f)(1)(B)(iii) of the Federal Property and Ad-  
12 ministrative Services Act of 1949 (41 U.S.C. 252c,  
13 253) are amended by striking “senior procurement  
14 executive” each place it appears and inserting  
15 “Chief Acquisition Officer”.

16 (3) AMENDMENT TO TITLE 10, UNITED STATES  
17 CODE.—The following sections of title 10, United  
18 States Code are amended by striking “senior pro-  
19 curement executive” each place it appears and in-  
20 serting “Chief Acquisition Officer”:

21 (A) Section 133(c)(1).

22 (B) Subsections (d)(2)(B) and (f)(1) of  
23 section 2225.

24 (C) Section 2302c(b).

25 (D) Section 2304(f)(1)(B)(iii).

1 (E) Section 2359a(i).

2 (4) REFERENCES.—Any reference to a senior  
3 procurement executive of a department or agency of  
4 the United States in any other provision of law or  
5 regulation, document, or record of the United States  
6 shall be deemed to be a reference to the Chief Acqui-  
7 sition Officer of the department or agency.

8 (c) TECHNICAL CORRECTION.—Section 1115(a) of  
9 title 31, United States Code, is amended by striking “sec-  
10 tion 1105(a)(29)” and inserting “section 1105(a)(28)”.

11 **SEC. 202. CHIEF ACQUISITION OFFICERS COUNCIL.**

12 (a) ESTABLISHMENT OF COUNCIL.—The Office of  
13 Federal Procurement Policy Act (41 U.S.C. 403 et seq.)  
14 is amended by inserting after section 16 the following new  
15 section:

16 **“SEC. 16A. CHIEF ACQUISITION OFFICERS COUNCIL.**

17 “(a) ESTABLISHMENT.—There is established in the  
18 executive branch a Chief Acquisition Officers Council.

19 “(b) MEMBERSHIP.—The members of the Council  
20 shall be as follows:

21 “(1) The Deputy Director for Management of  
22 the Office of Management and Budget, who shall act  
23 as Chairman of the Council.

24 “(2) The Administrator for Federal Procure-  
25 ment Policy.



1           “(3) The chief acquisition officer of each execu-  
2       tive agency.

3           “(4) The Under Secretary of Defense for Ac-  
4       quisition, Technology, and Logistics.

5           “(5) Any other officer or employee of the  
6       United States designated by the Chairman.

7       “(c) LEADERSHIP; SUPPORT.—(1) The Adminis-  
8       trator for Federal Procurement Policy shall lead the ac-  
9       tivities of the Council on behalf of the Deputy Director  
10      for Management.

11       “(2)(A) The Vice Chairman of the Council shall be  
12      selected by the Council from among its members.

13       “(B) The Vice Chairman shall serve a 1-year term,  
14      and may serve multiple terms.

15       “(3) The Administrator of General Services shall pro-  
16      vide administrative and other support for the Council.

17       “(d) PRINCIPAL FORUM.—The Council is designated  
18      the principal interagency forum for monitoring and im-  
19      proving the Federal acquisition system.

20       “(e) FUNCTIONS.—The Council shall perform func-  
21      tions that include the following:

22           “(1) Develop recommendations for the Director  
23       of the Office of Management and Budget on Federal  
24       acquisition policies and requirements.

1           “(2) Share experiences, ideas, best practices,  
2           and innovative approaches related to Federal acqui-  
3           sition.

4           “(3) Assist the Administrator in the identifica-  
5           tion, development, and coordination of multiagency  
6           projects and other innovative initiatives to improve  
7           Federal acquisition.

8           “(4) Promote effective business practices that  
9           ensure the timely delivery of best value products to  
10          the Federal Government and achieve appropriate  
11          public policy objectives.

12          “(5) Further integrity, fairness, competition,  
13          openness, and efficiency in the Federal acquisition  
14          system.

15          “(6) Work with the Office of Personnel Man-  
16          agement to assess and address the hiring, training,  
17          and professional development needs of the Federal  
18          Government related to acquisition.

19          “(7) Work with the Administrator and the Fed-  
20          eral Acquisition Regulatory Council to promote the  
21          business practices referred to in paragraph (4) and  
22          other results of the functions carried out under this  
23          subsection.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
2 in section 1(b) of such Act is amended by inserting after  
3 the item relating to section 16 the following new item:

“Sec. 16A. Chief Acquisition Officers Council.”.

4 **SEC. 203. STATUTORY AND REGULATORY REVIEW.**

5 (a) ESTABLISHMENT.—Not later than 90 days after  
6 the date of the enactment of this Act, the Administrator  
7 for Federal Procurement Policy shall establish an advisory  
8 panel to review laws and regulations regarding the use of  
9 commercial practices, performance-based contracting, the  
10 performance of acquisition functions across agency lines  
11 of responsibility, and the use of Governmentwide con-  
12 tracts.

13 (b) MEMBERSHIP.—The panel shall be composed of  
14 at least nine individuals who are recognized experts in ac-  
15 quisition law and Government acquisition policy. In mak-  
16 ing appointments to the panel, the Administrator shall—

17 (1) consult with the Secretary of Defense, the  
18 Administrator of General Services, the Committees  
19 on Armed Services and Government Reform of the  
20 House of Representatives, and the Committees on  
21 Armed Services and Governmental Affairs of the  
22 Senate, and

23 (2) ensure that the members of the panel reflect  
24 the diverse experiences in the public and private sec-  
25 tors.

1 (c) DUTIES.—The panel shall—

2 (1) review all Federal acquisition laws and reg-  
3 ulations with a view toward ensuring effective and  
4 appropriate use of commercial practices and per-  
5 formance-based contracting; and

6 (2) make any recommendations for the repeal  
7 or amendment of such laws or regulations that are  
8 considered necessary as a result of such review—

9 (A) to eliminate any provisions in such  
10 laws or regulations that are unnecessary for the  
11 effective, efficient, and fair award and adminis-  
12 tration of contracts for the acquisition by the  
13 Federal Government of goods and services;

14 (B) to ensure the continuing financial and  
15 ethical integrity of acquisitions by the Federal  
16 Government; and

17 (C) to protect the best interests of the  
18 Federal Government.

19 (d) REPORT.—Not later than one year after the es-  
20 tablishment of the panel, the panel shall submit to the Ad-  
21 ministrator and to the Committees on Armed Services and  
22 Government Reform of the House of Representatives and  
23 the Committees on Armed Services and Governmental Af-  
24 fairs of the Senate a report containing a detailed state-

1 ment of the findings, conclusions, and recommendations  
2 of the panel.

## 3 **Subtitle B—Other Acquisition** 4 **Improvements**

### 5 **SEC. 211. EXTENSION OF AUTHORITY TO CARRY OUT FRAN-** 6 **CHISE FUND PROGRAMS.**

7 Section 403(f) of the Federal Financial Management  
8 Act of 1994 (Public Law 103–356; 31 U.S.C. 501 note)  
9 is amended by striking “October 1, 2003” and inserting  
10 “October 1, 2006”.

### 11 **SEC. 212. AGENCY ACQUISITION PROTESTS.**

12 (a) DEFENSE CONTRACTS.—(1) Chapter 137 of title  
13 10, United States Code, is amended by inserting after sec-  
14 tion 2305a the following new section:

#### 15 **“§ 2305b. Protests**

16 “(a) IN GENERAL.—An interested party may protest  
17 an acquisition of supplies or services by an agency based  
18 on an alleged violation of an acquisition law or regulation,  
19 and a decision regarding such alleged violation shall be  
20 made by the agency in accordance with this section.

21 “(b) RESTRICTION ON CONTRACT AWARD PENDING  
22 DECISION.—(1) Except as provided in paragraph (2), a  
23 contract may not be awarded by an agency after a protest  
24 concerning the acquisition has been submitted under this  
25 section and while the protest is pending.

1       “(2) The head of the acquisition activity responsible  
2 for the award of the contract may authorize the award  
3 of a contract, notwithstanding pending protest under this  
4 section, upon making a written finding that urgent and  
5 compelling circumstances do not allow for waiting for a  
6 decision on the protest.

7       “(c) RESTRICTION ON CONTRACT PERFORMANCE  
8 PENDING DECISION.—(1) Except as provided in para-  
9 graph (2), performance of a contract may not be author-  
10 ized (and performance of the contract shall cease if per-  
11 formance has already begun) in any case in which a pro-  
12 test of the contract award is submitted under this section  
13 before the later of—

14           “(A) the date that is 10 days after the date of  
15 contract award; or

16           “(B) the date that is five days after an agency  
17 debriefing date offered to an unsuccessful offeror for  
18 any debriefing that is requested and, when re-  
19 quested, is required, under section 2305(b)(5) of  
20 this title.

21       “(2) The head of the acquisition activity responsible  
22 for the award of a contract may authorize performance  
23 of the contract notwithstanding a pending protest under  
24 this section upon making a written finding that urgent

1 and compelling circumstances do not allow for waiting for  
2 a decision on the protest.

3 “(d) DEADLINE FOR DECISION.—The head of an  
4 agency shall issue a decision on a protest under this sec-  
5 tion not later than the date that is 20 working days after  
6 the date on which the protest is submitted to such head  
7 of an agency.

8 “(e) CONSTRUCTION.—Nothing in this section shall  
9 affect the right of an interested party to file a protest with  
10 the Comptroller General under subchapter V of chapter  
11 35 of title 31 or in the United States Court of Federal  
12 Claims.

13 “(f) DEFINITIONS.—In this section, the terms ‘pro-  
14 test’ and ‘interested party’ have the meanings given such  
15 terms in section 3551 of title 31.”.

16 (2) The table of sections at the beginning of such  
17 chapter is amended by inserting after the item relating  
18 to section 2305a the following new item:

“2305b. Protests.”.

19 (b) OTHER AGENCIES.—Title III of the Federal  
20 Property and Administrative Services Act of 1949 is  
21 amended by inserting after section 303M (41 U.S.C.  
22 253m) the following new section:

23 **“SEC. 303N. PROTESTS.**

24 “(a) IN GENERAL.—An interested party may protest  
25 an acquisition of supplies or services by an executive agen-

1 cy based on an alleged violation of an acquisition law or  
2 regulation, and a decision regarding such alleged violation  
3 shall be made by the agency in accordance with this sec-  
4 tion.

5 “(b) RESTRICTION ON CONTRACT AWARD PENDING  
6 DECISION.—(1) Except as provided in paragraph (2), a  
7 contract may not be awarded by an agency after a protest  
8 concerning the acquisition has been submitted under this  
9 section and while the protest is pending.

10 “(2) The head of the acquisition activity responsible  
11 for the award of a contract may authorize the award of  
12 the contract, notwithstanding a pending protest under this  
13 section, upon making a written finding that urgent and  
14 compelling circumstances do not allow for waiting for a  
15 decision on the protest.

16 “(c) RESTRICTION ON CONTRACT PERFORMANCE  
17 PENDING DECISION.—(1) Except as provided in para-  
18 graph (2), performance of a contract may not be author-  
19 ized (and performance of the contract shall cease if per-  
20 formance has already begun) in any case in which a pro-  
21 test of the contract award is submitted under this section  
22 before the later of—

23 “(A) the date that is 10 days after the date of  
24 contract award; or



1           “(B) the date that is five days after an agency  
2       debriefing date offered to an unsuccessful offeror for  
3       any debriefing that is requested and, when re-  
4       quested, is required, under section 303B(e) of this  
5       title.

6           “(2) The head of the acquisition activity responsible  
7       for the award of a contract may authorize performance  
8       of the contract notwithstanding a pending protest under  
9       this section upon making a written finding that urgent  
10      and compelling circumstances do not allow for waiting for  
11      a decision on the protest.

12          “(d) DEADLINE FOR DECISION.—The head of an ex-  
13      ecutive agency shall issue a decision on a protest under  
14      this section not later than the date that is 20 working  
15      days after the date on which the protest is submitted to  
16      the executive agency.

17          “(e) CONSTRUCTION.—Nothing in this section shall  
18      affect the right of an interested party to file a protest with  
19      the Comptroller General under subchapter V of chapter  
20      35 of title 31, United States Code, or in the United States  
21      Court of Federal Claims.

22          “(f) DEFINITIONS.—In this section, the terms ‘pro-  
23      test’ and ‘interested party’ have the meanings given such  
24      terms in section 3551 of title 31, United States Code.”.

1 (c) CONFORMING AMENDMENT.—Section 3553(d)(4)  
2 of title 31, United States Code, is amended—

3 (1) in subparagraph (A), by striking “or” at  
4 the end;

5 (2) by striking the period at the end of sub-  
6 paragraph (B) and inserting “; or”; and

7 (3) by adding at the end the following new sub-  
8 paragraph:

9 “(C) in the case of a protest of the same matter  
10 regarding such contract that is submitted under sec-  
11 tion 2305b of title 10 or section 303N of the Fed-  
12 eral Property and Administrative Services Act of  
13 1949, the date that is 5 days after the date on  
14 which a decision on that protest is issued.”.

15 **SEC. 213. IMPROVEMENTS IN CONTRACTING FOR ARCHI-**  
16 **TECTURAL AND ENGINEERING SERVICES.**

17 (a) CLARIFICATION OF DEFINITION OF SURVEYING  
18 AND MAPPING.—(1) Section 1102 of title 40, United  
19 States Code, is amended by adding at the end the fol-  
20 lowing new paragraph:

21 “(4) SURVEYING AND MAPPING.—The term  
22 ‘surveying and mapping’ means services performed  
23 by professionals such as surveyors,  
24 photogrammetrists, hydrographers, geodesists, or  
25 cartographers in the collection, storage, retrieval, or

1 dissemination of graphical or digital data to depict  
2 natural or manmade physical features, phenomena,  
3 or boundaries of the earth and any information re-  
4 lated to such data, including any such data that  
5 comprises a survey, map, chart, geographic informa-  
6 tion system, remotely sensed image or data, or an  
7 aerial photograph.”.

8 (2) The Federal Acquisition Regulation shall be re-  
9 vised to include the definition added by subsection (a) of  
10 this section.

11 (b) TITLE 10.—Section 2855(b) of title 10, United  
12 States Code, is amended—

13 (1) in paragraph (2), by striking “\$85,000”  
14 and inserting “\$300,000”; and

15 (2) by adding at the end the following new  
16 paragraph:

17 “(4) The selection and competition requirements de-  
18 scribed in subsection (a) shall apply to any contract for  
19 architectural and engineering services (including surveying  
20 and mapping services) that is entered into by the head  
21 of an agency (as such term is defined in section 2302 of  
22 this title).”.

23 (c) ARCHITECTURAL AND ENGINEERING SERV-  
24 ICES.—Architectural and engineering services (as defined  
25 in section 1102 of title 40, United States Code) shall not

1 be offered under multiple-award schedule contracts en-  
2 tered into by the Administrator of General Services or  
3 under Governmentwide task and delivery-order contracts  
4 entered into under sections 2304a and 2304b of title 10,  
5 United States Code, or sections 303H and 303I of the  
6 Federal Property and Administrative Services Act of 1949  
7 (41 U.S.C. 253h and 253i) unless such services—

8 (1) are performed under the direct supervision  
9 of a professional engineer licensed in a State; and

10 (2) are awarded in accordance with the selec-  
11 tion procedures set forth in chapter 11 of title 40,  
12 United States Code.

13 **SEC. 214. AUTHORIZATION OF TELECOMMUTING FOR FED-**  
14 **ERAL CONTRACTORS.**

15 (a) AMENDMENT TO THE FEDERAL ACQUISITION  
16 REGULATION.—Not later than 180 days after the date of  
17 the enactment of this Act, the Federal Acquisition Regu-  
18 latory Council shall amend the Federal Acquisition Regu-  
19 lation issued in accordance with sections 6 and 25 of the  
20 Office of Federal Procurement Policy Act (41 U.S.C. 405  
21 and 421) to permit telecommuting by employees of Fed-  
22 eral Government contractors in the performance of con-  
23 tracts entered into with executive agencies.

24 (b) CONTENT OF AMENDMENT.—The regulation  
25 issued pursuant to subsection (a) shall, at a minimum,

1 provide that solicitations for the acquisition of property  
2 or services may not set forth any requirement or evalua-  
3 tion criteria that would—

4 (1) render an offeror ineligible to enter into a  
5 contract on the basis of the inclusion of a plan of  
6 the offeror to permit the offeror's employees to tele-  
7 commute; or

8 (2) reduce the scoring of an offer on the basis  
9 of the inclusion in the offer of a plan of the offeror  
10 to permit the offeror's employees to telecommute,  
11 unless the contracting officer concerned first—

12 (A) determines that the requirements of  
13 the agency, including the security requirements  
14 of the agency, cannot be met if the telecom-  
15 muting is permitted; and

16 (B) documents in writing the basis for that  
17 determination.

18 (c) GAO REPORT.—Not later than one year after the  
19 date on which the regulation required by subsection (a)  
20 is published in the Federal Register, the Comptroller Gen-  
21 eral shall submit to Congress—

22 (1) an evaluation of—

23 (A) the conformance of the regulations  
24 with law; and

1 (B) the compliance by executive agencies  
2 with the regulations; and

3 (2) any recommendations that the Comptroller  
4 General considers appropriate.

5 (d) DEFINITION.—In this section, the term “execu-  
6 tive agency” has the meaning given that term in section  
7 4 of the Office of Federal Procurement Policy Act (41  
8 U.S.C. 403).

9 **SEC. 215. PROCEDURAL REQUIREMENTS FOR CIVILIAN**  
10 **AGENCIES RELATING TO PRODUCTS OF FED-**  
11 **ERAL PRISON INDUSTRIES.**

12 Title III of the Federal Property and Administrative  
13 Services Act of 1949 (41 U.S.C. 251 et seq.) is amended  
14 by adding at the end the following new section:

15 **“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES:**  
16 **PROCEDURAL REQUIREMENTS.**

17 “(a) MARKET RESEARCH.—Before purchasing a  
18 product listed in the latest edition of the Federal Prison  
19 Industries catalog under section 4124(d) of title 18,  
20 United States Code, the head of an executive agency shall  
21 conduct market research to determine whether the Federal  
22 Prison Industries product is comparable to products avail-  
23 able from the private sector that best meet the executive  
24 agency’s needs in terms of price, quality, and time of deliv-  
25 ery.

1       “(b) COMPETITION REQUIREMENT.—If the head of  
2 the executive agency determines that a Federal Prison In-  
3 dustries product is not comparable in price, quality, or  
4 time of delivery to products available from the private sec-  
5 tor that best meet the executive agency’s needs in terms  
6 of price, quality, and time of delivery, the agency head  
7 shall use competitive procedures for the procurement of  
8 the product or shall make an individual purchase under  
9 a multiple award contract. In conducting such a competi-  
10 tion or making such a purchase, the agency head shall  
11 consider a timely offer from Federal Prison Industries.

12       “(c) IMPLEMENTATION BY HEAD OF EXECUTIVE  
13 AGENCY.—The head of an executive agency shall ensure  
14 that—

15               “(1) the executive agency does not purchase a  
16 Federal Prison Industries product or service unless  
17 a contracting officer of the agency determines that  
18 the product or service is comparable to products or  
19 services available from the private sector that best  
20 meet the agency’s needs in terms of price, quality,  
21 and time of delivery; and

22               “(2) Federal Prison Industries performs its  
23 contractual obligations to the same extent as any  
24 other contractor for the executive agency.

1       “(d) MARKET RESEARCH DETERMINATION NOT  
2 SUBJECT TO REVIEW.—A determination by a contracting  
3 officer regarding whether a product or service offered by  
4 Federal Prison Industries is comparable to products or  
5 services available from the private sector that best meet  
6 an executive agency’s needs in terms of price, quality, and  
7 time of delivery shall not be subject to review pursuant  
8 to section 4124(b) of title 18.

9       “(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A  
10 contractor or potential contractor of an executive agency  
11 may not be required to use Federal Prison Industries as  
12 a subcontractor or supplier of products or provider of serv-  
13 ices for the performance of a contract of the executive  
14 agency by any means, including means such as—

15           “(A) a contract solicitation provision requiring  
16 a contractor to offer to make use of products or  
17 services of Federal Prison Industries in the perform-  
18 ance of the contract;

19           “(B) a contract specification requiring the con-  
20 tractor to use specific products or services (or class-  
21 es of products or services) offered by Federal Prison  
22 Industries in the performance of the contract; or

23           “(C) any contract modification directing the use  
24 of products or services of Federal Prison Industries  
25 in the performance of the contract.



1       “(2) In this subsection, the term ‘contractor’, with  
2 respect to a contract, includes a subcontractor at any tier  
3 under the contract.

4       “(f) PROTECTION OF CLASSIFIED AND SENSITIVE  
5 INFORMATION.—The head of an executive agency may not  
6 enter into any contract with Federal Prison Industries  
7 under which an inmate worker would have access to—

8           “(1) any data that is classified;

9           “(2) any geographic data regarding the location  
10 of—

11           “(A) surface and subsurface infrastructure  
12 providing communications or water or electrical  
13 power distribution;

14           “(B) pipelines for the distribution of nat-  
15 ural gas, bulk petroleum products, or other  
16 commodities; or

17           “(C) other utilities; or

18           “(3) any personal or financial information  
19 about any individual private citizen, including infor-  
20 mation relating to such person’s real property how-  
21 ever described, without the prior consent of the indi-  
22 vidual.

23       “(g) DEFINITIONS.—In this section:

24           “(1) The term ‘competitive procedures’ has the  
25 meaning given such term in section 4(5) of the Of-

1        fice of Federal Procurement Policy Act (41 U.S.C.  
2        403(5)).

3            “(2) The term ‘market research’ means obtain-  
4        ing specific information about the price, quality, and  
5        time of delivery of products available in the private  
6        sector through a variety of means, which may  
7        include—

8            “(A) contacting knowledgeable individuals  
9        in government and industry;

10          “(B) interactive communication among in-  
11        dustry, acquisition personnel, and customers;  
12        and

13          “(C) interchange meetings or pre-solicita-  
14        tion conferences with potential offerors.”.

15            **TITLE III—CONTRACT**  
16            **INCENTIVES**

17        **SEC. 301. SHARE-IN-SAVINGS INITIATIVES.**

18        (a) DEFENSE CONTRACTS.—Section 2332 of title 10,  
19        United States Code, is amended to read as follows:

20        **“§ 2332. Share-in-savings contracts**

21        “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-  
22        INGS CONTRACTS.—(1) The head of an agency may enter  
23        into a share-in-savings contract in which the Government  
24        awards a contract to improve mission-related or adminis-  
25        trative processes or to accelerate the achievement of its

1 mission and share with the contractor in savings achieved  
2 through contract performance.

3 “(2)(A) Except as provided in subparagraph (B), a  
4 share-in-savings contract shall be awarded for a period of  
5 not more than five years.

6 “(B) A share-in-savings contract may be awarded for  
7 a period greater than five years, but not more than 10  
8 years, if the head of the agency determines in writing prior  
9 to award of the contract that—

10 “(i) the level of risk to be assumed and the in-  
11 vestment to be undertaken by the contractor is likely  
12 to inhibit the government from obtaining the needed  
13 performance competitively at a fair and reasonable  
14 price if the contract is limited in duration to a pe-  
15 riod of five years or less; and

16 “(ii) the performance to be acquired is likely to  
17 continue for a period of time sufficient to generate  
18 reasonable benefit for the government.

19 “(3) Contracts awarded pursuant to the authority of  
20 this section shall, to the maximum extent practicable, be  
21 performance-based contracts that identify objective out-  
22 comes and contain performance standards that will be  
23 used to measure achievement and milestones that must  
24 be met before payment is made.

1       “(4) Contracts awarded pursuant to the authority of  
2 this section shall include a provision containing a quantifi-  
3 able baseline that is to be the basis upon which a savings  
4 share ratio is established that governs the amount of pay-  
5 ment a contractor is to receive under the contract. Before  
6 commencement of performance of such a contract, the  
7 chief acquisition officer of the agency shall determine in  
8 writing that the terms of the provision are quantifiable  
9 and will likely yield value to the Government.

10       “(5)(A) The head of the agency may retain savings  
11 realized through the use of a share-in-savings contract  
12 under this section that are in excess of the total amount  
13 of savings paid to the contractor under the contract. Ex-  
14 cept as provided in subparagraph (B), savings shall be  
15 credited to the appropriation or fund against which  
16 charges were made to carry out the contract.

17       “(B) Amounts retained by the agency under this sub-  
18 section shall—

19               “(i) without further appropriation, remain  
20 available until expended; and

21               “(ii) be applied first to fund any contingent li-  
22 abilities associated with share-in-savings procure-  
23 ments that are not fully funded.

24       “(b) CANCELLATION AND TERMINATION.—(1) If  
25 funds are not made available for the continuation of a

1 share-in-savings contract entered into under this section  
2 in a subsequent fiscal year, the contract shall be canceled  
3 or terminated. The costs of cancellation or termination  
4 may be paid out of—

5 “(A) appropriations available for the perform-  
6 ance of the contract;

7 “(B) appropriations available for acquisition of  
8 the type of property or services procured under the  
9 contract, and not otherwise obligated; or

10 “(C) funds subsequently appropriated for pay-  
11 ments of costs of cancellation or termination, subject  
12 to the limitations in paragraph (3).

13 “(2) The amount payable in the event of cancellation  
14 or termination of a share-in-savings contract shall be ne-  
15 gotiated with the contractor at the time the contract is  
16 entered into.

17 “(3) The head of an agency may enter into share-  
18 in-savings contracts under this section in any given fiscal  
19 year even if funds are not made specifically available for  
20 the full costs of cancellation or termination of the contract  
21 if funds are available and sufficient to make payments  
22 with respect to the first fiscal year of the contract and  
23 the following conditions are met regarding the funding of  
24 cancellation and termination liability:

1           “(A) The amount of unfunded contingent liabil-  
2       ity for the contract does not exceed the lesser of—

3           “(i) 50 percent of the estimated costs of a  
4       cancellation or termination; or

5           “(ii) \$10,000,000.

6           “(B) Unfunded contingent liability in excess of  
7       \$5,000,000 has been approved by the Director of the  
8       Office of Management and Budget or the Director’s  
9       designee.

10       “(c) DEFINITIONS.—In this section:

11           “(1) The term ‘contractor’ means a private en-  
12       tity that enters into a contract with an agency.

13           “(2) The term ‘savings’ means—

14           “(A) monetary savings to an agency; or

15           “(B) savings in time or other benefits real-  
16       ized by the agency, including enhanced reve-  
17       nues.

18           “(3) The term ‘share-in-savings contract’ means  
19       a contract under which—

20           “(A) a contractor provides solutions for—

21           “(i) improving the agency’s mission-  
22       related or administrative processes; or

23           “(ii) accelerating the achievement of  
24       agency missions; and

1 “(B) the head of the agency pays the con-  
2 tractor an amount equal to a portion of the sav-  
3 ings derived by the agency from—

4 “(i) any improvements in mission-re-  
5 lated or administrative processes that re-  
6 sult from implementation of the solution;  
7 or

8 “(ii) acceleration of achievement of  
9 agency missions.”.

10 (b) OTHER CONTRACTS.—Section 317 of the Federal  
11 Property and Administrative Services Act of 1949 is  
12 amended to read as follows:

13 **“SEC. 317. SHARE-IN-SAVINGS CONTRACTS.**

14 “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-  
15 INGS CONTRACTS.—(1) The head of an executive agency  
16 may enter into a share-in-savings contract in which the  
17 Government awards a contract to improve mission-related  
18 or administrative processes or to accelerate the achieve-  
19 ment of its mission and share with the contractor in sav-  
20 ings achieved through contract performance.

21 “(2)(A) Except as provided in subparagraph (B), a  
22 share-in-savings contract shall be awarded for a period of  
23 not more than five years.

24 “(B) A share-in-savings contract may be awarded for  
25 a period greater than five years, but not more than 10

1 years, if the head of the agency determines in writing prior  
2 to award of the contract that—

3 “(i) the level of risk to be assumed and the in-  
4 vestment to be undertaken by the contractor is likely  
5 to inhibit the government from obtaining the needed  
6 performance competitively at a fair and reasonable  
7 price if the contract is limited in duration to a pe-  
8 riod of five years or less; and

9 “(ii) the performance to be acquired is likely to  
10 continue for a period of time sufficient to generate  
11 reasonable benefit for the government.

12 “(3) Contracts awarded pursuant to the authority of  
13 this section shall, to the maximum extent practicable, be  
14 performance-based contracts that identify objective out-  
15 comes and contain performance standards that will be  
16 used to measure achievement and milestones that must  
17 be met before payment is made.

18 “(4) Contracts awarded pursuant to the authority of  
19 this section shall include a provision containing a quantifi-  
20 able baseline that is to be the basis upon which a savings  
21 share ratio is established that governs the amount of pay-  
22 ment a contractor is to receive under the contract. Before  
23 commencement of performance of such a contract, the  
24 chief acquisition officer of the agency shall determine in



1 writing that the terms of the provision are quantifiable  
2 and will likely yield value to the Government.

3 “(5)(A) The head of the agency may retain savings  
4 realized through the use of a share-in-savings contract  
5 under this section that are in excess of the total amount  
6 of savings paid to the contractor under the contract. Ex-  
7 cept as provided in subparagraph (B), savings shall be  
8 credited to the appropriation or fund against which  
9 charges were made to carry out the contract.

10 “(B) Amounts retained by the agency under this sub-  
11 section shall—

12 “(i) without further appropriation, remain  
13 available until expended; and

14 “(ii) be applied first to fund any contingent li-  
15 abilities associated with share-in-savings procure-  
16 ments that are not fully funded.

17 “(b) CANCELLATION AND TERMINATION.—(1) If  
18 funds are not made available for the continuation of a  
19 share-in-savings contract entered into under this section  
20 in a subsequent fiscal year, the contract shall be canceled  
21 or terminated. The costs of cancellation or termination  
22 may be paid out of—

23 “(A) appropriations available for the perform-  
24 ance of the contract;

1           “(B) appropriations available for acquisition of  
2       the type of property or services procured under the  
3       contract, and not otherwise obligated; or

4           “(C) funds subsequently appropriated for pay-  
5       ments of costs of cancellation or termination, subject  
6       to the limitations in paragraph (3).

7       “(2) The amount payable in the event of cancellation  
8       or termination of a share-in-savings contract shall be ne-  
9       gotiated with the contractor at the time the contract is  
10      entered into.

11       “(3) The head of an executive agency may enter into  
12      share-in-savings contracts under this section in any given  
13      fiscal year even if funds are not made specifically available  
14      for the full costs of cancellation or termination of the con-  
15      tract if funds are available and sufficient to make pay-  
16      ments with respect to the first fiscal year of the contract  
17      and the following conditions are met regarding the funding  
18      of cancellation and termination liability:

19           “(A) The amount of unfunded contingent liabil-  
20       ity for the contract does not exceed the lesser of—

21                   “(i) 50 percent of the estimated costs of a  
22                   cancellation or termination; or

23                   “(ii) \$10,000,000.

24           “(B) Unfunded contingent liability in excess of  
25       \$5,000,000 has been approved by the Director of the

1 Office of Management and Budget or the Director's  
2 designee.

3 “(c) DEFINITIONS—In this section:

4 “(1) The term ‘contractor’ means a private en-  
5 tity that enters into a contract with an agency.

6 “(2) The term ‘savings’ means—

7 “(A) monetary savings to an agency; or

8 “(B) savings in time or other benefits real-  
9 ized by the agency, including enhanced reve-  
10 nues.

11 “(3) The term ‘share-in-savings contract’ means  
12 a contract under which—

13 “(A) a contractor provides solutions for—

14 “(i) improving the agency’s mission-  
15 related or administrative processes; or

16 “(ii) accelerating the achievement of  
17 agency missions; and

18 “(B) the head of the agency pays the con-  
19 tractor an amount equal to a portion of the sav-  
20 ings derived by the agency from—

21 “(i) any improvements in mission-re-  
22 lated or administrative processes that re-  
23 sult from implementation of the solution;  
24 or

1                   “(ii) acceleration of achievement of  
2                   agency missions.”.

3           (c) DEVELOPMENT OF INCENTIVES.—The Director  
4 of the Office of Management and Budget shall—

5               (1) identify potential opportunities for the use  
6 of share-in-savings contracts;

7               (2) provide guidance to executive agencies for  
8 determining mutually beneficial savings share ratios  
9 and baselines from which savings may be measured;  
10 and

11              (3) in consultation with the Committee on Gov-  
12 ernmental Affairs of the Senate, the Committee on  
13 Government Reform of the House of Representa-  
14 tives, and executive agencies, develop techniques to  
15 permit an executive agency to retain a portion of the  
16 savings (after payment of the contractor’s share of  
17 the savings) derived from share-in-savings contracts  
18 as funds are appropriated to the agency in future  
19 fiscal years.

20           (d) REGULATIONS.—Not later than 180 days after  
21 the date of the enactment of this Act, the Federal Acquisi-  
22 tion Regulation shall be revised to implement the provi-  
23 sions enacted by this section. Such revisions shall—

1           (1) provide for the use of competitive proce-  
2       dures in the selection and award of share-in-savings  
3       contracts to—

4           (A) ensure the contractor's share of sav-  
5       ings reflects the risk involved and market condi-  
6       tions; and

7           (B) otherwise yield best value to the gov-  
8       ernment; and

9           (2) allow appropriate regulatory flexibility to fa-  
10      cilitate the use of share-in-savings contracts by exec-  
11      utive agencies, including the use of innovative provi-  
12      sions for technology refreshment and nonstandard  
13      Federal Acquisition Regulation contract clauses.

14       (e) OMB REPORT TO CONGRESS.—In consultation  
15      with executive agencies, the Director of the Office of Man-  
16      agement and Budget shall, not later than 2 years after  
17      the completion of the revisions to the Federal Acquisition  
18      Regulation under subsection (d), submit to Congress a re-  
19      port containing—

20           (1) a description of the number of share-in-sav-  
21      ings contracts entered into by each executive agency  
22      under by this section and the amendments made by  
23      this section, and, for each contract identified—

24           (A) the performance acquired;

1 (B) the total amount of payments made to  
2 the contractor; and

3 (C) the total amount of savings or other  
4 measurable benefits realized;

5 (2) a description of the ability of agencies to de-  
6 termine the baseline costs of a project against which  
7 savings can be measured; and

8 (3) any recommendations, as the Director  
9 deems appropriate, regarding additional changes in  
10 law that may be necessary to ensure effective use of  
11 share-in-savings contracts by executive agencies.

12 (f) DEFINITIONS.—In this section, the terms “con-  
13 tractor”, “savings”, and “share-in-savings contract” have  
14 the meanings given those terms in section 2332 of title  
15 10, United States Code, and section 317 of the Federal  
16 Property and Administrative Services Act of 1949 (as  
17 amended by subsections (a) and (b)).

18 (g) REPEAL OF SUPERSEDED PROVISIONS.—Sub-  
19 sections (c), (d), (e), (f), (g), and (i) of section 210 of  
20 the E-Government Act of 2002 (Public Law 107–317; 116  
21 Stat. 2936) are repealed.

22 **SEC. 302. INCENTIVES FOR CONTRACT EFFICIENCY.**

23 (a) INCENTIVES FOR CONTRACT EFFICIENCY.—The  
24 Office of Federal Procurement Policy Act (41 U.S.C. 403

1 et seq.) is amended by adding at the end the following  
2 new section:

3 **“SEC. 41. INCENTIVES FOR EFFICIENT PERFORMANCE OF**  
4 **SERVICES CONTRACTS.**

5 “(a) OPTIONS FOR SERVICES CONTRACTS.—An op-  
6 tion included in a contract for services to extend the con-  
7 tract by one or more periods may provide that it be exer-  
8 cised on the basis of exceptional performance by the con-  
9 tractor. A contract that contains such an option provision  
10 shall include performance standards for measuring per-  
11 formance under the contract, and to the maximum extent  
12 practicable be performance-based. Such option provision  
13 shall only be exercised in accordance with applicable provi-  
14 sions of law or regulation that set forth restrictions on  
15 the duration of the contract containing the option.

16 “(b) DEFINITION OF PERFORMANCE-BASED.—In  
17 this section, the term ‘performance-based’, with respect to  
18 a contract, task order, or contracting, means that the con-  
19 tract, task order, or contracting, respectively, includes the  
20 use of performance work statements that set forth con-  
21 tract requirements in clear, specific, and objective terms  
22 with measurable outcomes.”.

23 (b) CLERICAL AND TECHNICAL AMENDMENTS.—(1)  
24 The table of contents in section 1(b) of such Act is amend-  
25 ed by striking the last item and inserting the following:

“Sec. 40. Protection of constitutional rights of contractors.

“Sec. 41. Incentives for efficient performance of services contracts.”.

1 (2) The section before section 41 of such Act (as  
2 added by subsection (a)) is redesignated as section 40.

### 3 **TITLE IV—ACQUISITIONS OF** 4 **COMMERCIAL ITEMS**

#### 5 **SEC. 401. ADDITIONAL INCENTIVE FOR USE OF PERFORM-** 6 **ANCE-BASED CONTRACTING FOR SERVICES.**

7 (a) OTHER CONTRACTS.—Section 41 of the Office of  
8 Federal Procurement Policy Act, as added by section 302,  
9 is amended—

10 (1) by redesignating subsection (b) as sub-  
11 section (c); and

12 (2) by inserting after subsection (a) the fol-  
13 lowing new subsection:

14 “(b) INCENTIVE FOR USE OF PERFORMANCE-BASED  
15 SERVICES CONTRACTS.—(1) A performance-based con-  
16 tract for the procurement of services entered into by an  
17 executive agency or a performance-based task order for  
18 services issued by an executive agency may be treated as  
19 a contract for the procurement of commercial items if—

20 “(A) the contract or task order sets forth spe-  
21 cifically each task to be performed and, for each  
22 task—

23 “(i) defines the task in measurable, mis-  
24 sion-related terms; and



1           “(ii) identifies the specific end products or  
2           output to be achieved; and

3           “(B) the source of the services provides similar  
4           services to the general public under terms and condi-  
5           tions similar to those offered to the Federal Govern-  
6           ment.

7           “(2) The regulations implementing this subsection  
8           shall require agencies to collect and maintain reliable data  
9           sufficient to identify the contracts or task orders treated  
10          as contracts for commercial items using the authority of  
11          this subsection. The data may be collected using the Fed-  
12          eral Procurement Data System or other reporting mecha-  
13          nism.

14          “(3) Not later than two years after the date of the  
15          enactment of this subsection, the Director of the Office  
16          of Management and Budget shall prepare and submit to  
17          the Committees on Governmental Affairs and on Armed  
18          Services of the Senate and the Committees on Government  
19          Reform and on Armed Services of the House of Represent-  
20          atives a report on the contracts or task orders treated as  
21          contracts for commercial items using the authority of this  
22          subsection. The report shall include data on the use of  
23          such authority both government-wide and for each depart-  
24          ment and agency.

1 “(4) The authority under this subsection shall expire  
2 10 years after the date of the enactment of this sub-  
3 section.”.

4 (b) CENTER OF EXCELLENCE IN SERVICE CON-  
5 TRACTING.—Not later than 180 days after the date of the  
6 enactment of this Act, the Administrator for Federal Pro-  
7 curement Policy shall establish a center of excellence in  
8 contracting for services. The center of excellence shall as-  
9 sist the acquisition community by identifying, and serving  
10 as a clearinghouse for, best practices in contracting for  
11 services in the public and private sectors.

12 (c) REPEAL OF SUPERSEDED PROVISION.—Sub-  
13 section (b) of section 821 of the Floyd D. Spence National  
14 Defense Authorization Act for Fiscal Year 2001 (as en-  
15 acted into law by Public Law 106–398; 114 Stat. 1654A–  
16 218) is repealed.

17 **SEC. 402. AUTHORIZATION OF ADDITIONAL COMMERCIAL**  
18 **CONTRACT TYPES.**

19 Section 8002(d) of the Federal Acquisition Stream-  
20 lining Act of 1994 (Public Law 103–355; 108 Stat. 3387;  
21 41 U.S.C. 264 note) is amended—

22 (1) in paragraph (1), by striking “and”;

23 (2) by striking the period at the end of para-  
24 graph (2) and inserting “; and”; and

1 (3) by adding at the end the following new  
2 paragraph:

3 “(3) authority for use of a time and materials  
4 contract or a labor-hour contract for the procure-  
5 ment of commercial services that are commonly sold  
6 to the general public through such contracts.”

7 **SEC. 403. CLARIFICATION OF COMMERCIAL SERVICES DEF-**  
8 **INITION.**

9 Subparagraph (F) of section 4(12) of the Office of  
10 Federal Procurement Policy Act (41 U.S.C. 403(12)(F))  
11 is amended—

12 (1) by striking “catalog or”; and

13 (2) by inserting “or specific outcomes to be  
14 achieved” after “performed”.

15 **SEC. 404. DESIGNATION OF COMMERCIAL BUSINESS ENTI-**  
16 **TIES.**

17 (a) IN GENERAL.—Section 4 of the Office of Federal  
18 Procurement Policy Act (41 U.S.C. 403), as amended by  
19 section 101, is further amended—

20 (1) by adding at the end of paragraph (12) the  
21 following new subparagraph:

22 “(I) Items or services produced or provided  
23 by a commercial entity.”; and

24 (2) by adding at the end the following new  
25 paragraph:

1           “(17) The term ‘commercial entity’ means any  
2       enterprise whose primary customers are other than  
3       the Federal Government. In order to qualify as a  
4       commercial entity, at least 90 percent (in dollars) of  
5       the sales of the enterprise over the past three busi-  
6       ness years must have been made to private sector  
7       entities.”.

8       (b) COLLECTION OF DATA.—Regulations imple-  
9       menting the amendments made by subsection (a) shall re-  
10      quire agencies to collect and maintain reliable data suffi-  
11      cient to identify the contracts entered into or task orders  
12      awarded for items or services produced or provided by a  
13      commercial entity. The data may be collected using the  
14      Federal Procurement Data System or other reporting  
15      mechanism.

16      (c) OMB REPORT.—Not later than two years after  
17      the date of the enactment of this subsection, the Director  
18      of the Office of Management and Budget shall prepare  
19      and submit to the Committees on Governmental Affairs  
20      and on Armed Services of the Senate and the Committees  
21      on Government Reform and on Armed Services of the  
22      House of Representatives a report on the contracts en-  
23      tered into or task orders awarded for items or services  
24      produced or provided by a commercial entity. The report

1 shall include data on the use of such authority both gov-  
 2 ernment-wide and for each department and agency.

3 (d) COMPTROLLER GENERAL REVIEW.—The Comp-  
 4 troller General shall review the implementation of the  
 5 amendments made by subsection (a) to evaluate the effec-  
 6 tiveness of such implementation in increasing the avail-  
 7 ability of items and services to the Federal Government  
 8 at fair and reasonable prices.

## 9 **TITLE V—OTHER MATTERS**

### 10 **SEC. 501. AUTHORITY TO ENTER INTO CERTAIN PROCURE-** 11 **MENT-RELATED TRANSACTIONS AND TO** 12 **CARRY OUT CERTAIN PROTOTYPE PROJECTS.**

13 Title III of the Federal Property and Administrative  
 14 Services Act of 1949 (41 U.S.C. 251 et seq.) as amended  
 15 by section 215, is further amended by adding at the end  
 16 the following new section:

### 17 **“SEC. 319. AUTHORITY TO ENTER INTO CERTAIN TRANS-** 18 **ACTIONS FOR DEFENSE AGAINST OR RECOV-** 19 **ERY FROM TERRORISM OR NUCLEAR, BIO-** 20 **LOGICAL, CHEMICAL, OR RADIOLOGICAL AT-** 21 **TACK.**

22 “(a) AUTHORITY.—

23 “(1) IN GENERAL.—The head of an executive  
 24 agency who engages in basic research, applied re-

1 search, advanced research, and development projects  
2 that—

3 “(A) are necessary to the responsibilities of  
4 such official’s executive agency in the field of  
5 research and development, and

6 “(B) have the potential to facilitate de-  
7 fense against or recovery from terrorism or nu-  
8 clear, biological, chemical, or radiological at-  
9 tack,

10 may exercise the same authority (subject to the  
11 same restrictions and conditions) with respect to  
12 such research and projects as the Secretary of De-  
13 fense may exercise under section 2371 of title 10,  
14 United States Code, except for subsections (b) and  
15 (f) of such section 2371.

16 “(2) PROTOTYPE PROJECTS.—The head of an  
17 executive agency may, under the authority of para-  
18 graph (1), carry out prototype projects that meet the  
19 requirements of subparagraphs (A) and (B) of para-  
20 graph (1) in accordance with the requirements and  
21 conditions provided for carrying out prototype  
22 projects under section 845 of the National Defense  
23 Authorization Act for Fiscal Year 1994 (Public Law  
24 103–160; 10 U.S.C. 2371 note). In applying the re-  
25 quirements and conditions of that section 845—

1 “(A) subsection (c) of that section shall  
2 apply with respect to prototype projects carried  
3 out under this paragraph; and

4 “(B) the Director of the Office of Manage-  
5 ment and Budget shall perform the functions of  
6 the Secretary of Defense under subsection (d)  
7 of that section.

8 “(3) APPLICABILITY TO SELECTED EXECUTIVE  
9 AGENCIES.—

10 “(A) OMB AUTHORIZATION REQUIRED.—  
11 The head of an executive agency may exercise  
12 authority under this subsection only if author-  
13 ized by the Director of the Office of Manage-  
14 ment and Budget to do so.

15 “(B) RELATIONSHIP TO AUTHORITY OF  
16 DEPARTMENT OF HOMELAND SECURITY.—The  
17 authority under this subsection shall not apply  
18 to the Secretary of Homeland Security while  
19 section 831 of the Homeland Security Act of  
20 2002 (Public Law 107-296; 116 Stat. 2224) is  
21 in effect.

22 “(b) ANNUAL REPORT.—The annual report of the  
23 head of an executive agency that is required under sub-  
24 section (h) of section 2371 of title 10, United States Code,  
25 as applied to the head of the executive agency by sub-

1 section (a), shall be submitted to the Committee on Gov-  
2 ernmental Affairs of the Senate and the Committee on  
3 Government Reform of the House of Representatives.

4 “(c) REGULATIONS.—The Director of the Office of  
5 Management and Budget shall prescribe regulations to  
6 carry out this section.”.

7 **SEC. 502. AMENDMENTS RELATING TO FEDERAL EMER-**  
8 **GENCY PROCUREMENT FLEXIBILITY.**

9 (a) REPEAL OF SUNSET FOR AUTHORITIES APPLICA-  
10 BLE TO PROCUREMENTS FOR DEFENSE AGAINST OR RE-  
11 COVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL,  
12 CHEMICAL, OR RADIOLOGICAL ATTACK.—Section 852 of  
13 the Homeland Security Act of 2002 (Public Law 107–296;  
14 116 Stat. 2235) is amended by striking “, but only if a  
15 solicitation of offers for the procurement is issued during  
16 the 1-year period beginning on the date of the enactment  
17 of this Act”.

18 (b) APPLICABILITY OF INCREASED SIMPLIFIED AC-  
19 QUISSION THRESHOLD.—(1) The matter preceding para-  
20 graph (1) of section 853(a) of the Homeland Security Act  
21 of 2002 (Public Law 107–296; 116 Stat. 2235) is amend-  
22 ed to read as follows:

23 “(a) THRESHOLD AMOUNTS.—For a procurement re-  
24 ferred to in section 852, the simplified acquisition thresh-  
25 old referred to in section 4(11) of the Office of Federal



1 Procurement Policy Act (41 U.S.C. 403(11)) is deemed  
2 to be—”.

3 (2) Subsections (b) and (c) of section 853 of such  
4 Act are repealed.

5 (3) The heading of section 853 of such Act is amend-  
6 ed to read as follows:

7 **“SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESH-**  
8 **OLD FOR CERTAIN PROCUREMENTS.”.**

9 (4) The table of contents in section 1(b) of such Act  
10 is amended by striking the item relating to section 853  
11 and inserting the following:

“Sec. 853. Increased simplified acquisition threshold for certain procurements.”.

12 (5) Section 18(c)(1) of the Office of Federal Procure-  
13 ment Policy Act (41 U.S.C. 416(c)(1)) is amended—

14 (A) by striking “or” at the end of subpara-  
15 graph (G);

16 (B) by striking the period at the end of sub-  
17 paragraph (H) and inserting “; or”; and

18 (C) by adding at the end the following:

19 “(I) the procurement is by the head of an exec-  
20 utive agency pursuant to the special procedures pro-  
21 vided in section 853 of the Homeland Security Act  
22 of 2002 (Public Law 107–296).”.

23 (c) **APPLICABILITY OF CERTAIN COMMERCIAL ITEMS**  
24 **AUTHORITIES.**—(1) Subsection (a) of section 855 of the

1 Homeland Security Act of 2002 (Public Law 107–296;  
2 116 Stat. 2236) is amended to read as follows:

3 “(a) **AUTHORITY.**—With respect to a procurement re-  
4 ferred to in section 852, the head of an executive agency  
5 may deem any item or service to be a commercial item  
6 for the purpose of Federal procurement laws.”.

7 (2) Subsection (b)(1) of section 855 of such Act is  
8 amended by striking “to which any of the provisions of  
9 law referred to in subsection (a) are applied”.

10 (d) **EXTENSION OF DEADLINE FOR REVIEW AND RE-**  
11 **PORT.**—Section 857(a) of the Homeland Security Act of  
12 2002 (Public Law 107–296; 116 Stat. 2237) is amended  
13 by striking “2004” and inserting “2006”.

14 **SEC. 503. AUTHORITY TO MAKE INFLATION ADJUSTMENTS**  
15 **TO SIMPLIFIED ACQUISITION THRESHOLD.**

16 Section 4(11) of the Office of Federal Procurement  
17 Policy Act (41 U.S.C. 403(11)) is amended by inserting  
18 before the period at the end the following: “, except that  
19 such amount may be adjusted by the Administrator every  
20 five years to the amount equal to \$100,000 in constant  
21 fiscal year 2003 dollars (rounded to the nearest  
22 \$10,000)”.

1 **SEC. 504. TECHNICAL CORRECTIONS RELATED TO DUPLI-**  
2 **CATIVE AMENDMENTS.**

3 (a) REPEAL OF SUPERSEDED SUBCHAPTER AND RE-  
4 LATED CONFORMING AMENDMENTS.—(1) Subchapter II  
5 of chapter 35 of title 44, United States Code, is repealed.

6 (2) Subchapter III of such chapter is redesignated  
7 as subchapter II.

8 (3) Section 3549 of title 44, United States Code, is  
9 amended by striking the sentence beginning with “While  
10 this subchapter”.

11 (4) The table of sections at the beginning of chapter  
12 35 of title 44, United States Code, is amended—

13 (A) by striking the items relating to sections  
14 3531 through 3538; and

15 (B) by striking the heading “SUBCHAPTER  
16 III—INFORMATION SECURITY”.

17 (5) Section 2224a of title 10, United States Code,  
18 is repealed, and the table of sections at the beginning of  
19 chapter 131 of such title is amended by striking the item  
20 relating to such section.

21 (b) CONFORMING AMENDMENTS RELATED TO RE-  
22 PEALS OF SHARE-IN-SAVINGS AND SOLUTIONS-BASED  
23 CONTRACTING PILOT PROGRAMS.—(1) Chapter 115 of  
24 title 40, United States Code, is repealed.

1       (2) The table of chapters at the beginning of subtitle  
2 III of such title is amended by striking the item relating  
3 to chapter 115.

4       (c) AMENDMENTS MADE BY E-GOVERNMENT ACT  
5 MADE APPLICABLE.—The following provisions of law  
6 shall read as if the amendments made by title X of the  
7 Homeland Security Act of 2002 (Public Law 107–296)  
8 to such provisions did not take effect:

9           (1) Section 2224 of title 10, United States  
10 Code.

11          (2) Sections 20 and 21 of the National Insti-  
12 tute of Standards and Technology Act (15 U.S.C.  
13 278g-3 and 278g-4).

14          (3) Sections 11331 and 11332 of title 40,  
15 United States Code.

16          (4) Subtitle G of title X of the Floyd D. Spence  
17 National Defense Authorization Act for Fiscal Year  
18 2001 (Public Law 106–398; 44 U.S.C. 3531 note).

19          (5) Sections 3504(g), 3505, and 3506(g) of  
20 title 44, United States Code.

21       (d) CORRECTION OF CROSS REFERENCE.—Section  
22 2224(c) of title 10, United States Code, as amended by  
23 section 301(c)(1)(B)(iii) of the E-Government Act of 2002  
24 (Public Law 107–347; 116 Stat. 2955), is amended by  
25 striking “subchapter III” and inserting “subchapter II”.

1 **SEC. 505. EXEMPTION FROM LIMITATIONS ON PROCURE-**  
2 **MENT OF FOREIGN INFORMATION TECH-**  
3 **NOLOGY THAT IS A COMMERCIAL ITEM.**

4 (a) EXEMPTION.—Notwithstanding any other provi-  
5 sion of law, in order to promote Government access to  
6 commercial information technology, the restriction on pur-  
7 chasing nondomestic articles, materials, and supplies set  
8 forth in the Buy American Act (41 U.S.C. 10a et seq.),  
9 and the prohibition on acquiring foreign products under  
10 section 302(a)(1) of the Trade Agreements Act of 1979  
11 (Public Law 96–39; 19 U.S.C. 2512(a)(1)), shall not  
12 apply to the acquisition by the Federal Government of in-  
13 formation technology (as defined in section 11101 of title  
14 40, United States Code, that is a commercial item (as de-  
15 fined in section 4(12) of the Office of Federal Procure-  
16 ment Policy Act (41 U.S.C. 403(12))).

17 (b) DEFINITION.—Section 11101(6) of title 40,  
18 United States Code, is amended—

19 (1) in subparagraph (A), by inserting after  
20 “storage,” the following: “analysis, evaluation,”; and

21 (2) in subparagraph (B), by striking “ancillary  
22 equipment,” and inserting “ancillary equipment (in-  
23 cluding imaging peripherals, input, output, and stor-  
24 age devices necessary for security and surveillance),  
25 peripheral equipment designed to be controlled by  
26 the central processing unit of a computer,”.

1 **SEC. 506. PROHIBITION ON USE OF QUOTAS.**

2 (a) IN GENERAL.—After the date of enactment of  
3 this Act, the Office of Management and Budget may not  
4 establish, apply, or enforce any numerical goal, target, or  
5 quota for subjecting the employees of a department or  
6 agency of the Government to public-private competitions  
7 or converting such employees or the work performed by  
8 such employees to contractor performance under Office of  
9 Management and Budget Circular A-76 or any other ad-  
10 ministrative regulation, directive, or policy unless the goal,  
11 target, or quota is based on considered research and sound  
12 analysis of past activities and is consistent with the stated  
13 mission of the department or agency.

14 (b) LIMITATIONS.—Subsection (a) shall not—

15 (1) otherwise affect the implementation or en-  
16 forcement of the Government Performance and Re-  
17 sults Act of 1993 (107 Stat. 285); or

18 (2) prevent any agency of the Executive branch  
19 from subjecting work performed by Federal employ-  
20 ees or private contractors to public-private competi-  
21 tion or conversions.

22 **SEC. 507. PUBLIC DISCLOSURE OF NONCOMPETITIVE CON-**  
23 **TRACTING FOR THE RECONSTRUCTION OF**  
24 **INFRASTRUCTURE IN IRAQ.**

25 (a) DISCLOSURE REQUIRED.—

1 (1) PUBLICATION AND PUBLIC AVAILABILITY.—

2 The head of an executive agency of the United  
3 States that enters into a contract for the repair,  
4 maintenance, or construction of infrastructure in  
5 Iraq without full and open competition shall publish  
6 in the Federal Register or Commerce Business Daily  
7 and otherwise make available to the public, not later  
8 than 30 days after the date on which the contract  
9 is entered into, the following information:

10 (A) The amount of the contract.

11 (B) A brief description of the scope of the  
12 contract.

13 (C) A discussion of how the executive  
14 agency identified, and solicited offers from, po-  
15 tential contractors to perform the contract, to-  
16 gether with a list of the potential contractors  
17 that were issued solicitations for the offers.

18 (D) The justification and approval docu-  
19 ments on which was based the determination to  
20 use procedures other than procedures that pro-  
21 vide for full and open competition.

22 (2) INAPPLICABILITY TO CONTRACTS AFTER  
23 FISCAL YEAR 2013.—Paragraph (1) does not apply to  
24 a contract entered into after September 30, 2013.

25 (b) CLASSIFIED INFORMATION.—

1           (1) AUTHORITY TO WITHHOLD.—The head of  
2 an executive agency may—

3           (A) withhold from publication and disclo-  
4 sure under subsection (a) any document that is  
5 classified for restricted access in accordance  
6 with an Executive order in the interest of na-  
7 tional defense or foreign policy; and

8           (B) redact any part so classified that is in  
9 a document not so classified before publication  
10 and disclosure of the document under sub-  
11 section (a).

12          (2) AVAILABILITY TO CONGRESS.—In any case  
13 in which the head of an executive agency withholds  
14 information under paragraph (1), the head of such  
15 executive agency shall make available an unredacted  
16 version of the document containing that information  
17 to the chairman and ranking member of each of the  
18 following committees of Congress:

19           (A) The Committee on Governmental Af-  
20 fairs of the Senate and the Committee on Gov-  
21 ernment Reform of the House of Representa-  
22 tives.

23           (B) The Committees on Appropriations of  
24 the Senate and House of Representatives.



1 (C) Each committee that the head of the  
2 executive agency determines has legislative ju-  
3 risdiction for the operations of such department  
4 or agency to which the information relates.

5 (c) FISCAL YEAR 2003 CONTRACTS.—This section  
6 shall apply to contracts entered into on or after October  
7 1, 2002, except that, in the case of a contract entered into  
8 before the date of the enactment of this Act, subsection  
9 (a) shall be applied as if the contract had been entered  
10 into on the date of the enactment of this Act.

11 (d) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—  
12 Nothing in this section shall be construed as affecting obli-  
13 gations to disclose United States Government information  
14 under any other provision of law.

15 (e) DEFINITIONS.—In this section, the terms “execu-  
16 tive agency” and “full and open competition” have the  
17 meanings given such terms in section 4 of the Office of  
18 Federal Procurement Policy Act (41 U.S.C. 403).

19 **SEC. 508. APPLICABILITY OF CERTAIN PROVISIONS TO**  
20 **SOLE SOURCE CONTRACTS FOR ITEMS AND**  
21 **SERVICES TREATED AS COMMERCIAL ITEMS.**

22 (a) IN GENERAL.—No contract awarded on a sole  
23 source basis for the procurement of items or services that  
24 are treated as or deemed to be commercial items pursuant

1 to the amendments made by section 401, 404, or 502 of  
2 this Act shall be exempt from—

3 (1) cost accounting standards promulgated pur-  
4 suant to section 26 of the Office of Federal Procure-  
5 ment Policy Act (41 U.S.C. 422); and

6 (2) cost or pricing data requirements (com-  
7 monly referred to as truth in negotiating) under sec-  
8 tion 2306a of title 10, United States Code, and sec-  
9 tion 304A of title III of the Federal Property and  
10 Administrative Services Act of 1949 (41 U.S.C.  
11 254b).

12 (b) LIMITATION.—This section shall not apply to any  
13 contract in an amount less than \$15,000,000.

Chairman SENSENBRENNER. I have a lengthy opening statement which will put everybody to sleep, so I would ask unanimous consent that all Members, including the Chair, be able to insert opening statements in the record at this time.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

H.R. 1837, the "Service Acquisition Reform Act of 2003," was introduced by Mr. Davis, the Chairman of the Government Reform Committee, to improve Federal acquisition workforce and services. The bill was reported by that Committee and sequentially referred to this Committee because of the ethics and Federal Tort Claims Act provisions that relate to an exchange program for public and private sector employees. In addition, the Government Reform Committee added language relating to Federal Prison Industries. The Committee received a one-day referral for consideration, which was subsequently extended to July 25, 2003. Because that time is about to expire, we are marking this bill up today.

As the Committee on Government Reform reported "the Service Acquisition Reform Act of 2003 (SARA), . . . is targeted at the root causes of the dilemma facing the government's acquisition system today: (1) The lack of up-to-date comprehensive training for our acquisition professionals; (2) the inability of the current government structure to reflect business-like practices by integrating the acquisition function into the overall agency mission and facilitating cross-agency acquisitions and information sharing; and (3) the lack of good tools and incentives to encourage the participation of the best commercial firms in the government market."

Section 103 of this bill authorizes a government-industry exchange program for public and private employees, who specialize in acquisition, to meet these goals. The section has criminal, ethical, and tort provisions identical to those that were included in the Digital Tech Corps Act of 2002. That Act created a government-industry exchange program for high tech managers and was reported out of the Judiciary Committee on March 20, 2002 and became law in December 2002.

This bill creates a similar employee exchange program between the Federal Government and the private sector in the acquisition workforce.

Under H.R. 1837, public employees who are temporarily sent to the private sector would remain under the protections of the Federal Tort Claims Act and private sector employees assigned to the government would receive the protections of the Federal Tort Claims Act.

Private sector employees detailed to Federal agencies for the exchange program, would be deemed Federal employees for certain purposes and subject to the same ethics rules, revolving door prohibitions and accountability provisions that cover Federal employees.

Additionally, this legislation would extend to the contracting officers of the various Civilian Agencies, including the new Department of Homeland Security, the same powers available to DOD in their dealings with Federal Prison Industries, Inc. (FPI).

It will better enable them to get "best value" for the tax-payers dollars being expended with FPI. Specifically, this section amends Title III of the Federal Property and Administrative Services Act of 1949, which governs procurement by the Civilian Agencies, to make explicit that a contracting officer is fully empowered to determine if a product offered by FPI is "comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery."

It will provide a contracting officer access to the full range of "market research" tools to make the required comparability determination, make explicit that the full range of competitive procurement techniques are available to a contracting officer, preclude FPI staff from challenging a contracting officer's determination regarding the comparability of a product offered by FPI, and empower contracting officers to ensure that FPI "performs its contractual obligations to the same extent as any other contractor."

These provisions are not inconsistent with H.R. 1829 and can operate in conjunction with the provisions of that legislation.

I support the bill and encourage my colleague to support it as well.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Thank you Chairman Sensenbrenner and Ranking Member Conyers for convening this Full Committee Markup opportunity concerning H.R. 1837, the Services Acquisition Reform Act of 2003 (SARA). The purpose of this legislation is to streamline the federal government procurement process as to its billion dollar goods and services requirements. While I support this bill and its goal of creating a chief acquisition officer post and establishing a training fund for acquisition of personnel, I regret that some of the amendments that my colleagues offered did not pass with the draft we have before us. They suggested ways to facilitate the government's ability to protect against waste, fraud, and abuse in federal contracting. One amendment offered by Representative Kucinich proposed to create a comprehensive, government-wide system to track the cost and quality of agency contracting efforts, focusing on contracts entered into as the result of a public-private competition as to Contract Tracking. The other as to the issue of Standing would have given federal employees or their representatives standing to appeal the results of an A-76 decision transferring federal jobs to private contractors. In the area of Competition, Representative Van Hollen offered an amendment to require any decision by an agency to transfer the performance of a function from federal employees to a contractor to be based on the results of a public-private competition process. To distinguish and ward against Corporate Expatriates, Representative Sanchez offered an amendment to prohibit agencies from entering into any contract with a subsidiary of a publicly traded corporation if the corporation is incorporated in a tax haven country but the United States is the principal market for the public trading of the corporation's stock. Furthermore, Representative Maloney offered an amendment to allow debarment officials across agencies to share information regarding contractors' activities. Finally, Mr. Maloney also offered an amendment to ensure the bill's position of Chief Acquisition Officer is held by a career professional. All of the above proposals would have made a substantive and positive contribution to improving the thrust of this bill.

I share the sentiment of my Democratic Colleagues in bemoaning the potential shortfalls of H.R. 1837 in the areas of Contractor Involvement in Federal Acquisition Decisions; "Share in Savings" Contracts; and "Other Transaction" Authority.

In the area of Contractor Involvement, this bill, as drafted, would give very weighty oversight duties of acquisition personnel to the private sector. This provision could give private contractors undue influence over the federal contracting and procurement process. I am a staunch advocate of the advancement and increased opportunity for small businesses; however, overall control of the process should remain in the hands of the federal government lest we develop a system that fosters unfair dealing and unsavory trade practices.

Section 301 of the bill authorizes a contract type called "share-in-savings." Under these contracts, the contractor agrees to bear the initial project costs until the agency begins to achieve specified savings or enhanced revenues from the work. Payment is based on a percentage of the savings or revenues realized by the agency.

These contracts are largely untested, both in the public and private sector. For this reason, after extensive negotiations, the E-Government Act of 2003 (P.L. 107-347) authorized 15 share-in-savings contracts in military departments and 15 in civilian agencies over a three-year period. The idea was that these 30 contracts would serve as pilot projects.

H.R. 1837 eliminates these carefully negotiated limits and gives all agencies permanent authority to enter into an unlimited number of share-in-savings contracts before any of the pilots have even begun. Moreover, SARA eliminates other safeguards in the E-Government Act, such as the requirement that "share in savings" contracts not be used in revenue enhancement. Revenue enhancing contracts raise a host of complicated issues, such as ensuring that share-in-savings contracts for debt collection do not bring about opportunities for excessive harassment.

One of the major concerns about these contracts is that they contravene congressional appropriations procedures. For other contracts, agencies must come to Congress for budget authority for the contracts. However, section 301 specifically waives this requirement if the government's potential liability under the contract is \$10 million or less. This removes an important element of oversight and accountability.

In addition, this legislation, in providing for "Other Transaction" Authority, unfairly allows certain agencies to contract absent the guidance of the procurement laws. Section 501 of SARA would extend to all civilian agencies "other transaction" authority for research and development projects related to defense against terrorism. This authority permits agencies to enter into contracts without regard to almost all federal statutes and regulations, including the Federal Acquisition Regulation, the Federal Property Act, the Competition in Contracting Act, the Federal Ac-

quisition Streamlining Act, and the Federal Grant and Cooperative Agreement Act, as well as the Truth in Negotiations Act and Cost Accounting Standards.

In the recently passed Homeland Security Act, the new Department of Homeland Security was given this authority for five years. The effect of the SARA provision is to repeal this time limit and to extend use of the authority to all agencies.

Mr. Chairman and Ranking Member, for the foregoing reasons, I support H.R. 1837 with reservations as to those areas covered by the amendments of my Democratic Colleagues that were rejected in Committee. Thank you very much for this opportunity to provide input.

Chairman SENSENBRENNER. I would point out that this bill has been referred to us under a sequential referral which expires today. There are some provisions within the jurisdiction of the Committee. I have no amendments. Does anybody else have an amendment?

The gentleman from Virginia Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Mr. Chairman, I don't have an amendment.

Chairman SENSENBRENNER. There is no amendment at the desk.

The clerk will report the amendment.

The CLERK. Amendment to H.R. 1837 offered by Mr. Scott of Virginia. Strike section 215 of the bill, page 44, line 9 through page 48, line 15, and conform the table of contents accordingly.

[The amendment follows:]

**AMENDMENT TO H.R. 1837****OFFERED BY MR. SCOTT OF VIRGINIA****(Page & line nos. refer to Committee Print of 7/23/03)**

Strike section 215 of the bill (page 44, line 9, through page 48, line 15) and conform the table of contents accordingly.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I won't take 5 minutes, because I think the purpose of the amendment is fairly simple. The bill would apply the Department of Defense contract restrictions to the rest of the Government contracting—the prison provisions to the rest of the Government contracting.

Already we have seen about 2,000 inmates' jobs lost. In a few minutes, Mr. Chairman, we will be marking up a comprehensive prison industries bill. So the provision is duplicative and unnecessary. Moreover, we are the Committee responsible for public safety, the safe, orderly and productive operation of our prisons and the productive and feeding of the prisoners. So anybody who believes that the public is better served by more inmates coming out of prison without more work and real work experience is, I think, speaking—is looking at different numbers than I am.

I would hope, Mr. Chairman, that we would focus the debate on the other bill and take the provision out of this legislation.

I yield back the balance of my time.

Chairman SENSENBRENNER. The Chair recognizes himself in opposition to the amendment.

This amendment should be defeated because it seeks to continue during the 5-year transition period the current captive relationship of the Federal agencies in which the Federal Prison Industries rather than the buying agency determines whether Prison Industries offer product, and delivery schedule meets the buying agency's need; and Prison Industries, rather than the buying agency, determine the reasonableness of the offered price by Federal Prison Industries.

This amendment would simply continue to allow Federal Prison Industries unilaterally to take Federal contracts and thus wasting taxpayers' dollars. It has written, the provision authorizes sole-source contract awards to Prison Industries during the 5-year transition period to full and open competition, which is a major concession to the business—by the business-labor coalition supporting comprehensive Federal prison industry reform.

The proponents of this amendment want to deprive the buying agency of getting what it needs when it needs it and at a reasonable price, and I urge a no vote on the amendment.

The question is on the—the gentleman from North Carolina.

Mr. WATT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I don't get to do this very often, so I want to take advantage of it. I just want to agree with the Chairman.

Chairman SENSENBRENNER. With that, the question is on the Scott amendment. Those in favor will say aye.

Opposed, no.

The ayes appear—excuse me. The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

If not, a reporting quorum is not present. Without objection, the previous question is ordered on the motion to report the bill favorably.

[Intervening business.]

Chairman SENSENBRENNER. A reporting quorum is now present. The unfinished business is the motion to report favorably the bill H.R. 1837, the "Services Acquisition Reform Act of 2003," upon which the previous question has been ordered on the motion to favorably report the bill. Those in favor will say aye.

Those opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the staff will be authorized to make technical and conforming changes.

Without objection, the Chair is authorized to go to conference pursuant to House rules, and all Members will be given 2 days under the rules in which to submit additional dissenting and minority or supplemental views.



## ADDITIONAL VIEWS

### I. BILL SUMMARY

Each year the U.S. government spends well over \$200 billion buying services and goods ranging from sophisticated information technology and management services to grass cutting and window washing, from paper clips to advanced weapon systems. More than half of that \$200 billion, over \$135 billion, is now spent on services—an increase of about 24 percent since 1990—establishing services as the Nation’s largest single spending category.

The Services Acquisition Reform Act (SARA) affects how the Federal Government procures these Federal goods and services. The aim of the legislation is to “streamline” the procurement process by remedying the following purported deficiencies: (1) the lack of up-to-date comprehensive training for acquisition professionals, (2) the inability of the current government structure to reflect business-like practices by integrating the acquisition function into the overall agency mission and facilitating cross-agency acquisitions and information sharing, and (3) the lack of effective tools and incentives to encourage the participation of the best commercial firms in the government market.

A similar SARA was introduced in the 107th Congress as H.R. 3832 and referred to the Committees on Government Reform and Armed Services. No action was taken on the bill in either Committee. Also introduced in the 107th Congress was H.R. 3925, the “Digital Tech Corps Act of 2002,” which allowed for the exchange of mid-level information technology staff between the government and private sector. This bill was reported favorably by the Judiciary Committee and passed the House on a voice vote. The bill was referred to a Senate Subcommittee and no action was taken.

In the 108th Congress, the new SARA was reintroduced and referred to the Committees on Government Reform, Armed Services, and Judiciary. The Government Reform Committee reported the bill favorably on May 7, 2003. However, key amendments on important acquisition issues offered by Democratic members were rejected during markup. In their dissenting views, the Democrats on the Committee concluded, “While we support the goal of streamlining Federal procurement laws, we cannot support SARA in its current form. Unfortunately, as reported by the Committee, the bill exposes the taxpayer to new forms of waste, fraud, and abuse in Federal contracting.”

### II. POLICY CONCERNS

We support the goal of improving the Federal procurement process. Toward this end, the legislation creates a chief acquisition officer and establishes a training fund for acquisition personnel. These steps will help promote a professional, well-trained Federal acquisi-

tion workforce and we applaud these developments. There are, however, a number of significant problems with the legislation. There are two problematic sections, both of which fall under the jurisdiction of the Judiciary Committee: 1) Section 103—the government-industry exchange program for acquisition personnel and 2) Section 215—procedural requirements for civilian agencies relating to products of Federal prison industries.

#### *A. Section 103*

This program is troublesome because it could give private contractors undue influence over the Federal contracting process. In effect, industry workers would be making government decisions on ensuring that contractors are not overpaid and that the work performed meets Federal standards. Turning these functions over to private sector employees is not only irresponsible, but dangerous.

Even if private sector contractors follow conflict of interest laws (which they are subject to in the bill) and do not work on projects involving their private employers, their involvement is still inappropriate. They will still be paid by their private employers and are expected to return to take on “increased acquisition management responsibilities” after the exchange is completed. They will still be making decisions concerning the overall industry they are employed in which will include decisions on competing private companies. Only persons who work for the government or are being paid by the government should be involved in making decisions about how much specific contractors are paid.

There have been many questions raised in recent months about possible ties between current members of the administration and certain private companies that contract with the government. How can the American people be sure that contracting is handled impartially and objectively when the very companies that benefit are also supplying the government decision-makers. The American people will only become more suspicious of this process if the bill in its current form passes.

Furthermore, we are concerned that Section 103 of the bill amounts to little more than a corporate welfare program for companies that have fallen on leaner times as a result of our ongoing economic recession. Rather than layoff workers in order to decrease expenditures, companies will try to temporarily shift their workers to government jobs. The expectation will be that those workers will return to the company in higher-paying jobs when the economy improves. And while these workers can retain their salaries while participating in the exchange program, they may apply for government funding and attempt to save their employers money.

#### *B. Section 215*

Because the Judiciary Committee already passed a comprehensive Federal Prison Industries bill, H.R. 1829, we feel that Section 215 is unnecessary. The bill would apply the Department of Defense contract restrictions to the rest of government contracting. Yet these restrictions have already brought about the loss of nearly 2,000 inmate jobs. Moreover, we are the Committee responsible for public safety and the safe, orderly and productive operation of our prisons. Research has shown that inmates who are released from

prison with practical work skills and work experience have a better chance of securing employment in the private sector. Prison work programs reduce crime and recidivism rates. Section 215 will take needed jobs away from inmates and have a negative effect on our efforts to fight crime and reduce the prison population.

During the markup, Rep. Scott offered an amendment to strike section 215 of the bill which was defeated by voice vote.

### III. CONCLUSION

In conclusion, we feel that Sections 103 and 215 of the bill should be deleted and hope that amendments accomplishing this will be ruled in order when the bill comes before the whole House for a vote. This will go a long way toward fighting crime, helping our prison population, and assuring the American people that government contracting is conducted in an impartial way—free of the undue influence of the private companies who stand to benefit. An amendment eliminating Section 103 will also remove what we see as little more than a government hand-out to contractors who have fallen on hard times because of the recession. An amendment eliminating Section 215 will ultimately help reduce our growing prison population.

JOHN CONYERS, JR.  
ROBERT C. SCOTT.  
MAXINE WATERS.

